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NORTH AMERICA. No. 1 (1871).

CORRESPONDENCE

RESPECTING THE

APPOINTMENT OF A JOINT HIGH COMMISSION

TO

CONSIDER THE VARIOUS QUESTIONS

AFFECTING THE

RELATIONS

BETWEEN

108671

GREAT BRITAIN

AND THE

UNITED STATES OF AMERICA.

Presented to both Houses of Parliament by Command of Her Majesty.
1871.

LONDON:
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Correspondence respecting the Appointment of a Joint High Commission to consider the various Questions affecting the Relations between Great Britain and the United States of America.

No. 1.

Sir E. Thornton to Earl Granville.—(Received February 19.)

(Extract.) *Washington, February 6, 1871.*

I HAVE the honour to inclose copies of a correspondence which has passed between Mr. Fish and myself relative to the appointment of a Joint High Commission to sit at Washington for the purpose of considering the questions which have lately arisen relative to the Canadian Fisheries, and any others which affect the relations of the United States towards Her Majesty's possessions in North America,—the so-called "Alabama" claims,—and any other claims of British subjects or citizens of the United States arising out of acts committed during the late Civil War in this country.

Inclosure 1 in No. 1.

Sir E. Thornton to Mr. Fish.

Sir, *Washington, January 26, 1871.*

IN compliance with an instruction which I have received from Earl Granville, I have the honour to state that Her Majesty's Government deem it of importance to the good relations which they are ever anxious should subsist and be strengthened between the United States and Great Britain, that a friendly and complete understanding should be come to between the two Governments as to the extent of the rights which belong to the citizens of the United States and Her Majesty's subjects respectively, with reference to the fisheries on the coasts of Her Majesty's Possessions in North America, and as to any other questions between them which affect the relations of the United States towards those Possessions.

As the consideration of these matters would, however, involve investigations of a somewhat complicated nature, and as it is very desirable that they should be thoroughly examined, I am directed by Lord Granville to propose to the Government of the United States the appointment of a Joint High Commission, which shall be composed of members to be named by each Government, shall hold its sessions at Washington, and shall treat of and discuss the mode of settling the different questions which have arisen out of the Fisheries, as well as all those which affect the relations of the United States towards Her Majesty's Possessions in North America.

I am confident that this proposal will be met by your Government in the same cordial spirit of friendship which has induced Her Majesty's Government to tender it, and I cannot doubt that in that case the result will not fail to contribute to the maintenance of the good relations between the two countries which I am convinced the Government of the United States, as well as that of Her Majesty, equally have at heart.

I have, &c.

(Signed) EDWD. THORNTON.

Inclosure 2 in No. 1.

Mr. Fish to Sir E. Thornton.

Sir, *Department of State, Washington, January* 30, 1871.

I HAVE the honour to acknowledge the receipt of your note of the 26th January, in which you inform me, in compliance with instructions from Earl Granville, that Her Majesty's Government deem it of importance to the good relations which they are ever anxious should subsist and be strengthened between the United States and Great Britain, that a friendly and complete understanding should be come to between the two Governments as to the extent of the rights which belong to the citizens of the United States and Her Majesty's subjects respectively, with reference to the Fisheries on the coasts of Her Majesty's Possessions in North America, and as to any other questions between them which affect the relations of the United States towards those Possessions; and farther, that as the consideration of these questions would involve investigations of a somewhat complicated nature; and as it is very desirable that they should be thoroughly examined, you are directed by Lord Granville to propose to the Government of the United States the appointment of a Joint High Commission, which shall be composed of members to be named by each Government, shall hold its sessions at Washington, and shall treat of and discuss the mode of settling the different questions which have arisen out of the Fisheries, as well as all those which affect the relations of the United States towards Her Majesty's Possessions in North America.

I have laid your note before the President, who instructs me to say that he shares with Her Majesty's Government the appreciation of the importance of a friendly and complete understanding between the two Governments with reference to the subjects specially suggested for the consideration of the proposed Joint High Commission, and he fully recognizes the friendly spirit which has prompted the proposal.

The President is, however, of the opinion that without the adjustment of a class of questions not alluded to in your note, the proposed High Commission would fail to establish the permanent relations, and the sincere, substantial, and lasting friendship between the two Governments, which, in common with Her Majesty's Government, he desires should prevail.

He thinks that the removal of the differences which arose during the rebellion in the United States, and which have existed since then, growing out of the acts committed by the several vessels which have given rise to the claims generically known as the "Alabama Claims," will also be essential to the restoration of cordial and amicable relations between the two Governments.

He directs me to say that, should Her Majesty's Government accept this view of this matter, and assent that this subject also may be treated of by the proposed High Commission, and may thus be put in the way of a final and amicable settlement, this Government will, with much pleasure, appoint High Commissioners on the part of the United States to meet those who may be appointed on behalf of Her Majesty's Government, and will spare no efforts to secure, at the earliest practicable moment, a just and amicable arrangement of all the questions which now, unfortunately, stand in the way of an entire and abiding friendship between the two nations.

I have, &c.
(Signed) HAMILTON FISH.

Inclosure 3 in No. 1.

Sir E. Thornton to Mr. Fish.

Sir, *Washington, February* 1, 1871.

I HAVE the honour to acknowledge the receipt of your note of the 30th ultimo, and to offer you my sincere and cordial thanks for the friendly and conciliatory spirit which pervades it.

With reference to that part of it in which you state that the President thinks that the removal of the differences which arose during the rebellion in the United States, and which have existed since then, growing out of the acts committed by the several vessels which have given rise to the claims generally known as the "Alabama" claims, will also be essential to the restoration of cordial and amicable relations between the two Governments, I have the honour to inform you that I have submitted to Earl Granville the opinion thus expressed by the President of the United States, the friendliness of which I beg you to believe I fully appreciate.

I am now authorized by his Lordship to state that it would give Her Majesty's Government great satisfaction if the claims commonly known by the name of the "Alabama" claims were submitted to the consideration of the same High Commission by which Her Majesty's Government have proposed that the questions relating to the British Possessions in North America should be discussed, provided that all other claims, both of British subjects and citizens of the United States, arising out of acts committed during the recent civil war in this country, are similarly referred to the same Commission.

The expressions made use of in the name of the President in your above-mentioned note with regard to the "Alabama" claims convince me that the Government of the United States will consider it of importance that these causes of dispute between the two countries should also and at the same time be done away with, and that you will enable me to convey to my Government the assent of the President to the addition which they thus propose to the duties of the High Commission, and which cannot fail to make it more certain that its labours will lead to the removal of all differences between the two countries.

I have, &c.
(Signed) EDWD. THORNTON.

Inclosure 4 in No. 1.

Mr. Fish to Sir E. Thornton

Sir, *Department of State, Washington, February* 3, 1871.

I HAVE the honour to acknowledge the receipt of your note of the 1st instant, in which you inform me that you are authorized by Earl Granville to state that it would give Her Majesty's Government great satisfaction if the claims commonly known by the name of the "Alabama" claims were submitted to the consideration of the same High Commission by which Her Majesty's Government have proposed that the questions relating to the British Possessions in North America should be discussed, provided that all other claims, both of British subjects and citizens of the United States, arising out of acts committed during the recent civil war in this country, are similarly referred to the same Commission.

I have laid your note before the President, and he has directed me to express the satisfaction with which he has received the intelligence that Earl Granville has authorized you to state that Her Majesty's Government has accepted the views of this Government as to the disposition to be made of the so-called "Alabama" claims.

He also directs me to say, with reference to the remainder of your note, that if there be other and further claims of British subjects or of American citizens growing out of acts committed during the recent civil war in this country, he assents to the propriety of their reference to the same High Commission; but he suggests that the High Commissioners shall consider only such claims of this description as may be presented by the Governments of the respective claimants at an early day, to be agreed upon by the Commissioners.

I have, &c.
(Signed) HAMILTON FISH.

No. 2.

Earl Granville to Sir E. Thornton.

Sir, *Foreign Office, February* 23, 1871.

I RECEIVED on the 19th instant your despatch of the 6th instant, inclosing copies of letters exchanged between yourself and the Secretary of State of the United States relative to the appointment of a Joint High Commission to sit at Washington for the purpose of considering pending questions between this country and the United States.

Her Majesty's Government having been regularly informed by you by telegraph of the satisfactory character of this correspondence, did not hesitate at once to send out the British Members of the Commission, and Lord de Grey and Mr. Bernard accordingly embarked for New York on the 11th, and Sir Stafford Northcote on the 18th instant; and it now only remains for me to acquaint you formally that Her Majesty's Government entirely approve of the tenor of your letters to Mr. Fish.

I am, &c.
(Signed) GRANVILLE.

No. 3.

Full Power to the Earl de Grey and Ripon, Sir Stafford Henry Northcote, Sir Edward Thornton, Sir John Alexander Macdonald, and Montague Bernard, Esq., to negotiate with Plenipotentiaries of the United States.

VICTORIA R.

VICTORIA, by the grace of God, Queen of the United Kingdom of Great Britain and Ireland, Defender of the Faith, &c., &c., &c., To all and singular to whom these Presents shall come, Greeting. Whereas, for the purpose of discussing in a friendly spirit with Commissioners to be appointed on the part of Our Good Friends the United States of America, the various questions on which differences have arisen between Us and Our said Good Friends, and of treating for an Agreement as to the mode of their amicable settlement, We have judged it expedient to invest fit persons with full power to conduct on Our part the discussions in this behalf: Know ye, therefore, that We, reposing especial trust and confidence in the wisdom, loyalty, diligence, and circumspection of Our right trusty and right well-beloved Cousin and Councillor George Frederick Samuel, Earl de Grey and Ripon, Viscount Goderich, a Peer of Our United Kingdom, President of Our Most Honourable Privy Council, Knight of Our Most Noble Order of the Garter, &c., &c., of Our right trusty and well-beloved Councillor Sir Stafford Henry Northcote, Baronet, a Member of Parliament, Companion of Our Most Honourable Order of the Bath, &c., &c.; of Our trusty and well-beloved Sir Edward Thornton, Knight Commander of Our Most Honourable Order of the Bath, Our Envoy Extraordinary and Minister Plenipotentiary to Our Good Friends the United States of America, &c., &c.; of Our trusty and well-beloved Sir John Alexander Macdonald, Knight Commander of Our Most Honourable Order of the Bath, a Member of Our Privy Council for Canada, and Minister of Justice and Attorney-General in Our Dominion of Canada, &c., &c.; and of Our trusty and well-beloved Montague Bernard, Esquire, Chichele Professor of International Law in the University of Oxford;—have named, made, constituted, and appointed, as We do by these presents name, make, constitute, and appoint them Our undoubted High Commissioners, Procurators, and Plenipotentiaries: Giving to them, or to any three or more of them, all manner of power and authority to treat, adjust, and conclude with such Minister or Ministers as may be vested with similar power and authority on the part of Our Good Friends the United States of America, any Treaties, Conventions, or Agreements that may tend to the attainment of the above-mentioned end, and to sign for Us and in Our name everything so agreed upon and concluded, and to do and transact all such other matters as may appertain to the finishing of the aforesaid work in as ample manner and form, and with equal force and efficacy, as We Ourselves could do if personally present: Engaging and promising upon Our Royal Word, that whatever things shall be so transacted and concluded by Our said High Commissioners, Procurators, and Plenipotentiaries shall be agreed to, acknowledged, and accepted by Us in the fullest manner, and that We will never suffer, either in the whole or in part, any person whatsoever to infringe the same, or act contrary thereto, as far as it lies in Our power.

In witness whereof We have caused the Great Seal of Our United Kingdom of Great Britain and Ireland to be affixed to these Presents, which We have signed with Our Royal Hand.

Given at Our Court at Windsor Castle, the sixteenth day of February, in the year of Our Lord one thousand eight hundred and seventy-one, and in the thirty-fourth year of Our reign.

NORTH AMERICA. No. 1 (1871).

CORRESPONDENCE respecting the Appointment of a Joint High Commission to consider the various Questions affecting the Relations between Great Britain and the United States of America.

Presented to both Houses of Parliament by Command of Her Majesty. 1871.

LONDON:
PRINTED BY HARRISON AND SONS.

BOMBAY BRANCH
OF THE
Royal Asiatic Society.
CLASS

NORTH AMERICA. No. 2 (1871).

DESPATCH

FROM

HER MAJESTY'S HIGH COMMISSIONERS,

WITH

COPY ANNEXED

OF THE

TREATY SIGNED AT WASHINGTON,

MAY 8, 1871.

Presented to both Houses of Parliament, by Command of Her Majesty.
1871.

LONDON:
PRINTED BY HARRISON AND SONS.

[C.—344.] *Price 2d.*

Despatch from Her Majesty's High Commissioners, with Copy annexed of the Treaty signed at Washington, May 8, 1871.

Her Majesty's High Commissioners to Earl Granville.—(Received May 21.)

My Lord, *Washington, May* 8, 1871.

WE have the honour to report that we have this day signed the Treaty with the United States' High Commissioners at the State Department.

Copies of the Treaty are inclosed. The original will be conveyed to London by Lord Tenterden.

As the duties of Her Majesty's High Commission have now been completed, we desire to bring to your Lordship's notice in a very special manner the valuable assistance which we have received from Lord Tenterden throughout our negotiations. We cannot speak too highly of the remarkable knowledge and ability which he has displayed, or of the zeal with which he has devoted himself to his duties, and we feel ourselves under the greatest obligations to him.

We further wish to place upon record our strong appreciation of the services which have been rendered to us by Mr. Henry Howard, and our sense of the great advantage which we have derived from them.

Our thanks are also due to Mr. H. S. Northcote, of whose special aptitude for business we have formed a high opinion, as well as to Viscount Goderich, who has rendered us most willing assistance.

We have, &c.
(Signed) DE GREY AND RIPON.
STAFFORD H. NORTHCOTE.
EDWD. THORNTON.
JOHN A. MACDONALD.
MOUNTAGUE BERNARD.

Inclosure.

Treaty between Her Majesty and the United States of America. Signed at Washington, May 8, 1871.

HER Britannic Majesty and the United States of America, being desirous to provide for an amicable settlement of all causes of difference between the two conntries, have for that purpose appointed their respective Plenipotentiaries, that is to say:—

Her Britannic Majesty on her part has appointed as Her High Commissioners and Plenipotentiaries, the Right Honourable George Frederick Samuel, Earl de Grey and Earl of Ripon, Viscount Goderich, Baron Grantham, a Baronet, a Peer of the United Kingdom, Lord President of Her Majesty's Most Honourable Privy Council, Knight of the Most Noble Order of the Garter, &c., &c.; the Right Honourable Sir Stafford Henry Northcote, Baronet, one of Her Majesty's Most Honourable Privy Council, a Member of Parliament, a Companion of the Most Honourable Order of the Bath, &c., &c.; Sir Edward Thornton, Knight Commander of the Most Honourable Order of the Bath, Her Majesty's Envoy Extraordinary and Minister Plenipotentiary to the United States of America; Sir John Alexander Macdonald, Knight Commander of the Most Honourable Order of the Bath, a Member of Her Majesty's Privy Council for Canada, and Minister of Justice and Attorney-General of Her Majesty's Dominion of Canada; and Mountague Bernard, Esq., Chichele Professor of International Law in the University of Oxford;

And the President of the United States has appointed on the part of the United States as Commissioners in a Joint High Commission and Plenipotentiaries, Hamilton Fish, Secretary of State; Robert Cumming Schenck, Envoy Extraordinary and Minister Plenipotentiary to Great Britain; Samuel Nelson, an Associate Justice of the Supreme Court of the United States; Ebenezer Rockwood Hoar, of Massachusetts; and George Henry Williams, of Oregon;

And the said Plenipotentiaries, after having exchanged their full powers, which were found to be in due and proper form, have agreed to and concluded the following Articles:—

ARTICLE I.

Whereas differences have arisen between the Government of the United States and the Government of Her Britannic Majesty, and still exist, growing out of the acts committed by the several vessels which have given rise to the claims generically known as the "Alabama" claims:

And whereas Her Britannic Majesty has authorized Her High Commissioners and Plenipotentiaries to express, in a friendly spirit, the regret felt by Her Majesty's Government for the escape, under whatever circumstances, of the "Alabama" and other vessels from British ports, and for the depredations committed by those vessels:

Now, in order to remove and adjust all complaints and claims on the part of the United States, and to provide for the speedy settlement of such claims, which are not admitted by Her Britannic Majesty's Government, the High Contracting Parties agree that all the said claims, growing out of acts committed by the aforesaid vessels, and generically known as the "Alabama" claims, shall be referred to a Tribunal of Arbitration to be composed of five Arbitrators to be appointed in the following manner, that is to say: one shall be named by Her Britannic Majesty; one shall be named by the President of the United States; His Majesty the King of Italy shall be requested to name one; the President of the Swiss Confederation shall be requested to name one; and His Majesty the Emperor of Brazil shall be requested to name one.

In case of the death, absence, or incapacity to serve of any or either of the said Arbitrators, or in the event of either of the said Arbitrators omitting or declining or ceasing to act as such, Her Britannic Majesty, or the President of the United States, or His Majesty the King of Italy, or the President of the Swiss Confederation, or His Majesty the Emperor of Brazil, as the case may be, may forthwith name another person to act as Arbitrator in the place and stead of the Arbitrator originally named by such head of a State.

And in the event of the refusal or omission for two months after receipt of the request from either of the High Contracting Parties of His Majesty the King of Italy, or the President of the Swiss Confederation, or His Majesty the Emperor of Brazil, to name an Arbitrator. either to fill the original appointment or in the place of one who may have died, be absent, or incapacitated, or who may omit, decline, or from any cause cease to act as such Arbitrator, His Majesty the King of Sweden and Norway shall be requested to name one or more persons, as the case may be, to act as such Arbitrator or Arbitrators.

ARTICLE II.

The Arbitrators shall meet at Geneva, in Switzerland, at the earliest convenient day after they shall have been named, and shall proceed impartially and carefully to examine and decide all questions that shall be laid before them on the part of the Governments of Her Britannic Majesty and the United States respectively. All questions considered by the Tribunal, including the final award, shall be decided by a majority of all the Arbitrators.

Each of the High Contracting Parties shall also name one person to attend the Tribunal as its Agent to represent it generally in all matters connected with the arbitration.

ARTICLE III.

The written or printed case of each of the two Parties, accompanied by the documents, the official correspondence, and other evidence on which each relies, shall be delivered in duplicate to each of the Arbitrators and to the Agent of the other Party as soon as may be after the organization of the Tribunal, but within a period not exceeding six months from the date of the exchange of the ratifications of this Treaty.

ARTICLE IV.

Within four months after the delivery on both sides of the written or printed case, either Party may, in like manner, deliver in duplicate to each of the said Arbitrators, and to the Agent of the other Party, a counter case and additional documents, correspondence, and evidence, in reply to the case, documents, correspondence, and evidence, so presented by the other Party.

The Arbitrators may, however, extend the time for delivering such counter case, documents, correspondence, and evidence, when, in their judgment, it becomes necessary, in consequence of the distance of the place from which the evidence to be presented is to be procured.

If in the case submitted to the Arbitrators either Party shall have specified or alluded to any report or document in its own exclusive possession without annexing a copy, such Party shall be bound, if the other Party thinks proper to apply for it, to furnish that Party with a copy thereof; and either Party may call upon the other, through the Arbitrators, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance such reasonable notice as the Arbitrators may require.

ARTICLE V.

It shall be the duty of the Agent of each Party, within two months after the expiration of the time limited for the delivery of the counter case on both sides, to deliver in duplicate to each of the said Arbitrators and to the Agent of the other Party a written or printed argument showing the points and referring to the evidence upon which his Government relies; and the Arbitrators may, if they desire further elucidation with regard to any point, require a written or printed statement or argument or oral argument by counsel upon it; but in such case the other Party shall be entitled to reply either orally or in writing, as the case may be.

ARTICLE VI.

In deciding the matters submitted to the Arbitrators they shall be governed by the following three rules, which are agreed upon by the High Contracting Parties as rules to be taken as applicable to the case, and by such principles of international law not inconsistent therewith as the Arbitrators shall determine to have been applicable to the case:—

RULES.

A neutral Government is bound—

First:—To use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruize or to carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruize or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

Secondly:—Not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

Thirdly:—To exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

Her Britannic Majesty has commanded her High Commissioners and Plenipotentiaries to declare that Her Majesty's Government cannot assent to the foregoing rules as a statement of principles of international law which were in force at the time when the claims mentioned in Article I arose, but that Her Majesty's Government, in order to evince its desire of strengthening the friendly relations between the two countries and of making satisfactory provision for the future, agrees that, in deciding the questions between the two countries arising out of those claims, the Arbitrators should assume that Her Majesty's Government had undertaken to act upon the principles set forth in these rules.

And the High Contracting Parties agree to observe these rules as between themselves in future, and to bring them to the knowledge of other maritime Powers and to invite them to accede to them.

ARTICLE VII.

The decision of the Tribunal shall, if possible, be made within three months from the close of the argument on both sides.

It shall be made in writing and dated, and shall be signed by the Arbitrators who may assent to it.

The said Tribunal shall first determine as to each vessel separately whether Great Britain has, by any act or omission, failed to fulfil any of the duties set forth in the foregoing three rules, or recognized by the principles of international law not inconsistent with such rules, and shall certify such fact as to each of the said vessels. In case the Tribunal find that Great Britain has failed to fulfil any duty or duties as aforesaid, it may, if it think proper, proceed to award a sum in gross to be paid by Great Britain to the United States for all the claims referred to it; and in such case the gross sum so awarded shall be paid in coin by the Government of Great Britain to the Government of the United States at Washington within twelve months after the date of the award.

The award shall be in duplicate, one copy whereof shall be delivered to the Agent of Great Britain for his Government, and the other copy shall be delivered to the Agent of the United States for his Government.

ARTICLE VIII.

Each Government shall pay its own Agent and provide for the proper remuneration of the Counsel employed by it, and of the Arbitrator appointed by it, and for the expense of preparing and submitting its case to the Tribunal. All other expenses connected with the arbitration shall be defrayed by the two Governments in equal moieties.

ARTICLE IX.

The Arbitrators shall keep an accurate record of their proceedings, and may appoint and employ the necessary officers to assist them.

ARTICLE X.

In case the Tribunal finds that Great Britain has failed to fulfil any duty or duties as aforesaid, and does not award a sum in gross, the High Contracting Parties agree that a Board of Assessors shall be appointed to ascertain and determine what claims are valid, and what amount or amounts shall be paid by Great Britain to the United States on account of the liability arising from such failure as to each vessel, according to the extent of such liability as decided by the Arbitrators.

The Board of Assessors shall be constituted as follows: One member thereof shall be named by Her Britannic Majesty, one member thereof shall be named by the President of the United States, and one member thereof shall be named by the Representative at Washington of His Majesty the King of Italy; and in case of a vacancy happening from any cause, it shall be filled in the same manner in which the original appointment was made.

As soon as possible after such nominations the Board of Assessors shall be organized in Washington with power to hold their sittings there, or in New York, or in Boston. The members thereof shall severally subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment and according to justice and equity, all matters submitted to them, and shall forthwith proceed, under such rules and regulations as they may prescribe, to the investigation of the claims which shall be presented to them by the Government of the United States, and shall examine and decide upon them in such order and manner as they may think proper, but upon such evidence or information only as shall be furnished by or on behalf of the Governments of Great Britain and of the United States respectively. They shall be bound to hear on each separate claim, if required, one person on behalf of each Government as Counsel or Agent. A majority of the Assessors in each case shall be sufficient for a decision.

The decision of the Assessors shall be given upon each claim in writing, and shall be signed by them respectively, and dated.

Every claim shall be presented to the Assessors within six months from the day of their first meeting; but they may, for good cause shown, extend the time for the presentation of any claim to a further period not exceeding three months.

The Assessors shall report to each Government, at or before the expiration of one year from the date of their first meeting, the amount of claims decided by them up to the date of such report; if further claims then remain undecided, they shall make a further report at or before the expiration of two years from the date of such first meeting; and in case any claims remain undetermined at that time, they shall make a final report within a further period of six months.

The report or reports shall be made in duplicate, and one copy thereof shall be delivered to the Representative of Her Britannic Majesty at Washington, and one copy thereof to the Secretary of State of the United States.

All sums of money which may be awarded under this Article shall be payable at Washington, in coin, within twelve months after the delivery of each report.

The Board of Assessors may employ such clerks as they shall think necessary.

The expenses of the Board of Assessors shall be borne equally by the two Governments, and paid from time to time, as may be found expedient, on the production of accounts certified by the Board. The remuneration of the Assessors shall also be paid by the two Governments in equal moieties in a similar manner.

ARTICLE XI.

The High Contracting Parties engage to consider the result of the proceedings of the Tribunal of Arbitration and of the Board of Assessors, should such Board be appointed, as a full, perfect, and final settlement of all the claims hereinbefore referred to; and further engage that every such claim, whether the same may or may not have been presented to the notice of, made, preferred, or laid before the Tribunal or Board, shall, from and after the conclusion of the proceedings of the Tribunal or Board, be considered and treated as finally settled, barred, and thenceforth inadmissible.

ARTICLE XII.

The High Contracting Parties agree that all claims on the part of Corporations, Companies, or private individuals, citizens of the United States, upon the Government of Her Britannic Majesty, arising out of acts committed against the persons or property of citizens of the United States during the period between the 13th of April, 1861, and the 9th of April, 1865, inclusive, not being claims growing out of the acts of the vessels referred to in Article I of this Treaty; and all claims, with the like exception, on the part of Corporations, Companies, or private individuals, subjects of Her Britannic Majesty, upon the Government of the United States, arising out of acts committed against the persons or property of subjects of Her Britannic Majesty during the same period, which may have been presented to either Government for its interposition with the other, and which yet remain unsettled, as well as any other such claims which may be presented within the time specified in Article XIV of this Treaty, shall be referred to three Commissioners, to be appointed in the following manner, that is to say:—One Commissioner shall be named by Her Britannic Majesty, one by the President of the United States, and a third by Her Britannic Majesty and the President of the United States conjointly; and in case the third Commissioner shall not have been so named within a period of three months from the date of the exchange of the ratifications of this Treaty, then the third Commissioner shall be named by the Representative at Washington of His Majesty the King of Spain. In case of the death, absence, or incapacity of any Commissioner, or in the event of any Commissioner omitting or ceasing to act, the vacancy shall be filled in the manner hereinbefore provided for making the original appointment, the period of three months in case of such substitution being calculated from the date of the happening of the vacancy.

The Commissioners so named, shall meet at Washington at the earliest convenient period after they have been respectively named; and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment, and according to justice and equity, all such claims as shall be laid before them on the part of the Governments of Her Britannic Majesty, and of the United States, respectively; and such declaration shall be entered on the record of their proceedings.

ARTICLE XIII.

The Commissioners shall then forthwith proceed to the investigation of the claims which shall be presented to them. They shall investigate and decide such claims in such order and such manner as they may think proper, but upon such evidence or information only as shall be furnished by or on behalf of their respective Governments. They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of their respective Governments in support of, or in answer to, any claim; and to hear, if required, one person on each side, on behalf of each Government, as Counsel or Agent for such Governmeut, on each and every separate claim. A majority of the Commissioners shall be sufficient for an award in each case. The award shall be given upon each claim in writing, and shall be signed by the Commissioners assenting to it. It shall be competent for each Government to name one person to attend the Commissioners as its Agent to present and support claims on its behalf, and to answer claims made upon it, and to represent it generally in all matters connected with the investigation and decision thereof.

The High Contracting Parties hereby engage to consider the decision of the Commissioners as absolutely final and conclusive upon each claim decided upon by them, and to give full effect to such decisions without any objection, evasion, or delay whatsoever.

ARTICLE XIV.

Every claim shall be presented to the Commissioners within six months from the day of their first meeting, unless in any case where reasons for delay shall be established to the satisfaction of the Commissioners; and then, and in any such case, the period for presenting the claim may be extended by them to any time not exceeding three months longer.

The Commissioners shall be bound to examine and decide upon every claim within two years from the day of their first meeting. It shall be competent for the Commissioners to decide in each case whether any claim has or has not been duly made, preferred, and laid before them, either wholly or to any and what extent, according to the true intent and meaning of this Treaty.

ARTICLE XV.

All sums of money which may be awarded by the Commissioners on account of any claim shall be paid by the one Government to the other, as the case may be, within twelve months after the date of the final award, without interest, and without any deduction save as specified in Article XVI of this Treaty.

ARTICLE XVI.

The Commissioners shall keep an accurate record, and correct minutes or notes of all their proceedings, with the dates thereof, and may appoint and employ a Secretary, and any other necessary officer or officers, to assist them in the transaction of the business which may come before them.

Each Government shall pay its own Commissioner and Agent or Counsel. All other expenses shall be defrayed by the two Governments in equal moieties.

The whole expenses of the Commission, including contingent expenses, shall be defrayed by a rateable deduction on the amount of the sums awarded by the Commissioners; provided always that such deduction shall not exceed the rate of 5 per cent. on the sums so awarded.

ARTICLE XVII.

The High Contracting Parties engage to consider the result of the proceedings of this Commission as a full, perfect, and final settlement of all such claims as are mentioned in Article XII of this Treaty upon either Government; and further engage that every such claim, whether or not the same may have been presented to the notice of, made, preferred, or laid before the said Commission, shall, from and after the conclusion of the proceedings of the said Commission, be considered and treated as finally settled, barred, and thenceforth inadmissible.

ARTICLE XVIII.

It is agreed by the High Contracting Parties that, in addition to the liberty secured to the United States' fishermen by the Convention between Great Britain and the United States, signed at London on the 20th day of October, 1818, of taking, curing, and drying fish on certain coasts of the British North American Colonies therein defined, the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty, for the term of years mentioned in Article XXXIII of this Treaty, to take fish of every kind, except shell-fish, on the sea-coasts and shores, and in the bays, harbours, and creeks, of the Provinces of Quebec, Nova Scotia, and New Brunswick, and the Colony of Prince Edward's Island, and of the several islands thereunto adjacent, without being restricted to any distance from the shore, with permission to land upon the said coasts and shores and islands, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish; provided that, in so doing, they do not interfere with the rights of private property, or with British fishermen, in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

It is understood that the above-mentioned liberty applies solely to the sea fishery, and that the salmon and shad fisheries, and all other fisheries in rivers and the mouths of rivers, are hereby reserved exclusively for British fishermen.

ARTICLE XIX.

It is agreed by the High Contracting Parties that British subjects shall have, in common with the citizens of the United States, the liberty, for the term of years mentioned in Article XXXIII of this Treaty, to take fish of every kind, except shell-fish, on the eastern sea-coasts and shores of the United States north of the thirty-ninth parallel of north latitude, and on the shores of the several islands thereunto adjacent, and in the bays, harbours, and creeks of the said sea-coasts and shores of the United States and of the said islands, without being restricted to any distance from the shore, with permission to land upon the said coasts of the United States and of the islands aforesaid, for the purpose of drying their nets and curing their fish; provided that, in so doing, they do not interfere with the rights of private property, or with the fishermen of the United States, in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

It is understood that the abovementioned liberty applies solely to the sea fishery, and that salmon and shad fisheries, and all other fisheries in rivers and mouths of rivers are hereby reserved exclusively for fishermen of the United States.

ARTICLE XX.

It is agreed that the places designated by the Commissioners appointed under the first Article of the Treaty between Great Britain and the United States, concluded at Washington on the 5th of June, 1854, upon the coasts of the United States and Her Britannic Majesty's dominions, as places reserved from the common right of fishing under that Treaty, shall be regarded as in like manner reserved from the common right of fishing under the preceding Articles. In case any question should arise between the Governments of Her Britannic Majesty and of the United States as to the common right of fishing in places not thus designated as reserved, it is agreed that a Commission shall be appointed to designate such places, and shall be constituted in the same manner, and have the same powers, duties, and authority as the Commission appointed under the said first Article of the Treaty of the 5th of June, 1854.

ARTICLE XXI.

It is agreed that, for the term of years mentioned in Article XXXIII of this Treaty, fish oil and fish of all kinds, (except fish of the inland lakes, and of the rivers falling into them, and except fish preserved in oil,) being the produce of the fisheries of the United States, or of the Dominion of Canada, or of Prince Edward's Island, shall be admitted into each country, respectively, free of duty.

ARTICLE XXII.

Inasmuch as it is asserted by the Government of Her Britannic Majesty that the privileges accorded to the citizens of the United States under Article XVIII of this Treaty are of greater value than those accorded by Articles XIX and XXI of this Treaty to the subjects of Her Britannic Majesty, and this assertion is not admitted by the Government of the United States; it is further agreed that Commissioners shall be appointed to determine, having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in Articles XIX and XXI of this Treaty, the amount of any compensation which, in their opinion, ought to be paid by the Government of the United States to the Government of Her Britannic Majesty in return for the privileges accorded to the citizens of the United States under Article XVIII of this Treaty; and that any sum of money which the said Commissioners may so award shall be paid by the United States Government, in a gross sum, within twelve months after such award shall have been given.

ARTICLE XXIII.

The Commissioners referred to in the preceding Article shall be appointed in the following manner, that is to say: One Commissioner shall be named by Her Britannic Majesty, one by the President of the United States, and a third by Her Britannic Majesty and the President of the United States conjointly; and in case the third Commissioner shall not have been so named within a period of three months from the date when this Article shall take effect, then the third Commissioner shall be named by the Representative at London of His Majesty the Emperor of Austria and King of Hungary. In case of the death, absence, or incapacity of any Commissioner, or in the event of any Commissioner omitting or ceasing to act, the vacancy shall be filled in the manner hereinbefore provided for making the original appointment, the period of three months in case of such substitution being calculated from the date of the happening of the vacancy.

The Commissioners so named shall meet in the city of Halifax, in the Province of Nova Scotia, at the earliest convenient period after they have been respectively named, and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide the matters referred to them to the best of their judgment, and according to justice and equity; and such declaration shall be entered on the record of their proceedings.

Each of the High Contracting Parties shall also name one person to attend the Commission as its agent, to represent it generally in all matters connected with the Commission.

ARTICLE XXIV.

The proceedings shall be conducted in such order as the Commissioners appointed under Articles XXII and XXIII of this Treaty shall determine. They shall be bound to receive such oral or written testimony as either Government may present. If either Party shall offer oral testimony, the other Party shall have the right of cross-examination, under such rules as the Commissioners shall prescribe.

If in the case submitted to the Commissioners either Party shall have specified or alluded to any report or document in its own exclusive possession, without annexing a copy, such Party shall be bound, if the other Party thinks proper to apply for it, to furnish that Party with a copy thereof; and either Party may call upon the other, through the Commissioners, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance such reasonable notice as the Commissioners may require.

The case on either side shall be closed within a period of six months from the date of the organization of the Commission, and the Commissioners shall be requested to give their award as soon as possible thereafter. The aforesaid period of six months may be extended for three months in case of a vacancy occurring among the Commissioners under the circumstances contemplated in Article XXIII of this Treaty.

ARTICLE XXV.

The Commissioners shall keep an accurate record and correct Minutes or notes of all their proceedings, with the dates thereof, and may appoint and employ a Secretary and any other necessary officer or officers to assist them in the transaction of the business which may come before them.

Each of the High Contracting Parties shall pay its own Commissioner and Agent or Counsel; all other expenses shall be defrayed by the two Governments in equal moieties.

ARTICLE XXVI.

The navigation of the River St. Lawrence, ascending and descending, from the forty-fifth parallel of north latitude, where it ceases to form the boundary between the two countries, from, to, and into the sea, shall for ever remain free and open for the purposes of commerce to the citizens of the United States, subject to any laws and regulations of Great Britain, or of the Dominion of Canada, not inconsistent with such privilege of free navigation.

The navigation of the Rivers Yukon, Porcupine, and Stikine, ascending and descending from, to, and into the sea, shall for ever remain free and open for the purposes of commerce to the subjects of Her Britannic Majesty and to the citizens of the United States, subject to any laws and regulations of either country within its own territory, not inconsistent with such privilege of free navigation.

ARTICLE XXVII.

The Government of Her Britannic Majesty engages to urge upon the Government of the Dominion of Canada to secure to the citizens of the United States the use of the Welland, St. Lawrence, and other canals in the Dominion on terms of equality with the inhabitants of the Dominion; and the Government of the United States engages that the subjects of Her Britannic Majesty shall enjoy the use of the St. Clair Flats Canal on terms of equality with the inhabitants of the United States, and further engages to urge upon the State Governments to secure to the subjects of Her Britannic Majesty the use of the several State canals connected with the navigation of the lakes or rivers traversed by or contiguous to the boundary line between the possessions of the High Contracting Parties, on terms of equality with the inhabitants of the United States.

ARTICLE XXVIII.

The navigation of Lake Michigan shall also, for the term of years mentioned in Article XXXIII of this Treaty, be free and open for the purposes of commerce to the subjects of Her Britannic Majesty, subject to any laws and regulations of the United States or of the States bordering thereon not inconsistent with such privilege of free navigation.

ARTICLE XXIX.

It is agreed that, for the term of years mentioned in Article XXXIII of this Treaty, goods, wares, or merchandize arriving at the ports of New York, Boston, and Portland, and any other ports in the United States which have been or may from time to time be specially designated by the President of the United States, and destined for Her Britannic Majesty's Possessions in North America, may be entered at the proper Custom-house and conveyed in transit, without the payment of duties, through the territory of the United States, under such rules, regulations, and conditions for the protection of the revenue as the Government of the United States may from time to time prescribe; and, under like rules, regulations, and conditions, goods, wares, or merchandize may be conveyed in transit, without the payment of duties, from such possessions through the territory of the United States for export from the said ports of the United States.

It is further agreed that for the like period goods, wares, or merchandize arriving at any of the ports of Her Britannic Majesty's Possessions in North America and destined for the United States may be entered at the proper Custom-house and conveyed in transit without the payment of duties, through the said Possessions, under such rules and regulations, and conditions for the protection of the revenue, as the Governments of the said Possessions may from time to time prescribe; and under like rules, regulations, and conditions, goods, wares, or merchandize may be conveyed in transit, without payment of duties, from the United States through the said Possessions to other places in the United States, or for export from ports in the said Possessions.

ARTICLE XXX.

It is agreed that, for the term of years mentioned in Article XXXIII of this Treaty, subjects of Her Britannic Majesty may carry in British vessels, without payment of duty, goods, wares, or merchandize from one port or place within the territory of the United States upon the St. Lawrence, the Great Lakes, and the rivers connecting the same, to another port or place within the territory of the United States as aforesaid: Provided, That a portion of such transportation is made through the Dominion of Canada by land carriage and in bond, under such rules and regulations as may be agreed upon between the Government of Her Britannic Majesty and the Government of the United States.

Citizens of the United States may for the like period carry in United States' vessels, without payment of duty, goods, wares, or merchandize from one port or place within the Possessions of Her Britannic Majesty in North America, to another port or place within the said Possessions: Provided, That a portion of such transportation is made through the territory of the United States by land carriage and in bond, under such rules and regulations as may be agreed upon between the Government of the United States and the Government of Her Britannic Majesty.

The Government of the United States further engages not to impose any export duties on goods, wares, or merchandize carried under this Article through the territory of the United States; and Her Majesty's Government engages to urge the Parliament of the Dominion of Canada and the Legislatures of the other Colonies not to impose any export duties on goods, wares, or merchandize carried under this Article; and the Government of the United States may, in case such export duties are imposed by the Dominion of Canada, suspend, during the period that such duties are imposed, the right of carrying granted under this Article in favour of the subjects of Her Britannic Majesty.

The Government of the United States may suspend the right of carrying granted in favour of the subjects of Her Britannic Majesty under this Article in case the Dominion of Canada should at any time deprive the citizens of the United States of the use of the canals in the said Dominion on terms of equality with the inhabitants of the Dominion, as provided in Article XXVII.

ARTICLE XXXI.

The Government of Her Britannic Majesty further engages to urge upon the Parliament of the Dominion of Canada and the Legislature of New Brunswick, that no export duty, or other duty, shall be levied on lumber or timber of any kind cut on that portion

of the American territory in the State of Maine watered by the river St. John and its tributaries, and floated down that river to the sea, when the same is shipped to the United States from the province of New Brunswick. And, in case any such export or other duty continues to be levied after the expiration of one year from the date of the exchange of the ratifications of this Treaty, it is agreed that the Government of the United States may suspend the right of carrying hereinbefore granted under Article XXX of this Treaty for such period as such export or other duty may be levied.

ARTICLE XXXII.

It is further agreed that the provisions and stipulations of Articles XVIII to XXV of this Treaty, inclusive, shall extend to the Colony of Newfoundland, so far as they are applicable. But if the Imperial Parliament, the Legislature of Newfoundland, or the Congress of the United States, shall not embrace the Colony of Newfoundland in their laws enacted for carrying the foregoing Articles into effect, then this Article shall be of no effect; but the omission to make provision by law to give it effect, by either of the Legislative Bodies aforesaid, shall not in any way impair any other Articles of this Treaty.

ARTICLE XXXIII.

The foregoing Articles XVIII to XXV inclusive, and Article XXX of this Treaty, shall take effect as soon as the laws required to carry them into operation shall have been passed by the Imperial Parliament of Great Britain, by the Parliament of Canada, and by the Legislature of Prince Edward's Island on the one hand, and by the Congress of the United States on the other. Such assent having been given, the said Articles shall remain in force for the period of ten years from the date at which they may come into operation, and further, until the expiration of two years after either of the High Contracting Parties shall have given notice to the other of its wish to terminate the same; each of the High Contracting Parties being at liberty to give such notice to the other at the end of the said period of ten years or at any time afterward.

ARTICLE XXXIV.

Whereas it was stipulated by Article I of the Treaty concluded at Washington on the 15th of June, 1846, between Her Britannic Majesty and the United States, that the line of boundary between the territories of the United States and those of Her Britannic Majesty, from the point on the forty-ninth parallel of north latitude up to which it had already been ascertained, should be continued westward along the said parallel of north latitude "to the middle of the channel which separates the continent from Vancouver's Island, and thence southerly, through the middle of the said channel and of Fuca Straits, to the Pacific Ocean;" and whereas the Commissioners appointed by the two High Contracting Parties to determine that portion of the boundary which runs southerly through the middle of the channel aforesaid were unable to agree upon the same; and whereas the Government of Her Britannic Majesty claims that such boundary line should, under the terms of the Treaty above recited, be run through the Rosario Straits, and the Government of the United States claims that it should be run through the Canal de Haro, it is agreed that the respective claims of the Government of Her Britannic Majesty and of the Government of the United States shall be submitted to the arbitration and award of His Majesty the Emperor of Germany, who, having regard to the above-mentioned Article of the said Treaty, shall decide thereupon, finally and without appeal, which of those claims is most in accordance with the true interpretation of the Treaty of June 15, 1846.

ARTICLE XXXV.

The award of His Majesty the Emperor of Germany shall be considered as absolutely final and conclusive; and full effect shall be given to such award without any objection, evasion, or delay whatsoever. Such decision shall be given in writing and dated; it shall be in whatsoever form His Majesty may choose to adopt; it shall be delivered to the Representatives or other public Agents of Great Britain and of the United States respectively, who may be actually at Berlin, and shall be considered as operative from the day of the date of the delivery thereof.

ARTICLE XXXVI.

The written or printed case of each of the two Parties, accompanied by the evidence offered in support of the same, shall be laid before His Majesty the Emperor of Germany

within six months from the date of the exchange of the ratifications of this Treaty, and a copy of such case and evidence shall be communicated by each Party to the other, through their respective Representatives at Berlin.

The High Contracting Parties may include in the evidence to be considered by the Arbitrator, such documents, official correspondence, and other official or public statements bearing on the subject of the reference as they may consider necessary to the support of their respective cases.

After the written or printed case shall have been communicated by each Party to the other, each Party shall have the power of drawing up and laying before the Arbitrator a second and definitive statement, if it think fit to do so, in reply to the case of the other Party so communicated, which definitive statement shall be so laid before the Arbitrator, and also be mutually communicated in the same manner as aforesaid, by each party to the other, within six months from the date of laying the first statement of the case before the Arbitrator.

ARTICLE XXXVII.

If, in the case submitted to the Arbitrator, either Party shall specify or allude to any report or document in its own exclusive possession without annexing a copy, such Party shall be bound, if the other Party thinks proper to apply for it, to furnish that Party with a copy thereof, and either Party may call upon the other, through the Arbitrator, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance such reasonable notice as the Arbitrator may require. And if the Arbitrator should desire further elucidation or evidence with regard to any point contained in the statements laid before him, he shall be at liberty to require it from either Party, and he shall be at liberty to hear one counsel or agent for each Party, in relation to any matter, and at such time, and in such manner, as he may think fit.

ARTICLE XXXVIII.

The Representatives or other public Agents of Great Britain and of the United States at Berlin respectively, shall be considered as the Agents of their respective Governments to conduct their cases before the Arbitrator, who shall be requested to address all his communications, and give all his notices, to such Representatives or other public Agents, who shall represent their respective Governments generally in all matters connected with the arbitration.

ARTICLE XXXIX.

It shall be competent to the Arbitrator to proceed in the said Arbitration, and all matters relating thereto, as and when he shall see fit, either in person, or by a person or persons named by him for that purpose, either in the presence or absence of either or both Agents, and either orally or by written discussion, or otherwise.

ARTICLE XL.

The Arbitrator may, if he think fit, appoint a Secretary or Clerk, for the purposes of the proposed arbitration, at such rate of remuneration as he shall think proper. This, and all other expenses of and connected with the said arbitration, shall be provided for as hereinafter stipulated.

ARTICLE XLI.

The Arbitrator shall be requested to deliver, together with his award, an account of all the costs and expenses which he may have been put to, in relation to this matter, which shall forthwith be repaid by the two Governments in equal moieties.

ARTICLE XLII.

The Arbitrator shall be requested to give his award in writing as early as convenient after the whole case on each side shall have been laid before him, and to deliver one copy thereof to each of the said Agents.

ARTICLE XLIII.

The present Treaty shall be duly ratified by Her Britannic Majesty, and by the President of the United States of America, by and with the advice and consent of the

Senate thereof, and the ratifications shall be exchanged either at London or at Washington within six months from the date hereof, or earlier if possible.

In faith whereof, we, the respective Plenipotentiaries, have signed this Treaty, and have hereunto affixed our seals.

Done in duplicate at Washington, the eighth day of May, in the year of Our Lord one thousand eight hundred and seventy-one.

(L.S.) DE GREY AND RIPON.
(L.S.) STAFFORD H. NORTHCOTE.
(L.S.) EDWD. THORNTON.
(L.S.) JOHN A. MACDONALD.
(L.S.) MOUNTAGUE BERNARD.
(L.S.) HAMILTON FISH.
(L.S.) ROBT. C. SCHENCK.
(L.S.) SAMUEL NELSON.
(L.S.) EBENEZER ROCKWOOD HOAR.
(L.S.) GEO. H. WILLIAMS.

NORTH AMERICA. No. 2 (1871).

DESPATCH from Her Majesty's High Commissioners, with Copy annexed of the Treaty signed at Washington, May 8, 1871.

Presented to both Houses of Parliament by Command of Her Majesty. 1871.

LONDON:
PRINTED BY HARRISON AND SONS.

NORTH AMERICA. No. 3 (1871).

INSTRUCTIONS

HER MAJESTY'S HIGH COMMISSIONERS,

AND

PROTOCOLS OF CONFERENCES

HELD AT

WASHINGTON

BETWEEN

FEBRUARY 27 AND MAY 6, 1871.

Presented to both Houses of Parliament by Command of Her Majesty.
1871.

LONDON:
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Instructions to Her Majesty's High Commissioners, and Protocols of Conferences held at Washington between February 27 and May 6, 1871.

No. 1.

Earl Granville to Her Majesty's High Commissioners.

My Lord and Gentlemen, *Foreign Office, February* 9, 1871.

THE Queen having been graciously pleased to appoint you to be Her Majesty's High Commissioners to proceed to Washington for the purpose of discussing in a friendly spirit with Commissioners to be appointed by the Government of the United States the various questions on which differences have arisen between Great Britain and that country, and of treating for an agreement as to the mode of their amicable settlement, I inclose the necessary full powers, and have the honour to convey to you the following instructions for your guidance.

It is the earnest desire of Her Majesty's Government that the important negotiation with which you are entrusted should be conducted in a mutually conciliatory disposition and with unreserved frankness in your communications with the High Commissioners or Members of the Government of the United States with whom you may be placed in communication, and they believe that this object cannot be better attained than by leaving you full discretion as to the manner in which the subjects which may engage your attention should be discussed.

The principal subjects will probably be:—

1. The Fisheries.
2. The free navigation of the River St. Lawrence and privilege of passage through the Canadian canals.
3. The transit of goods through Maine, and lumber trade down the River St. John.
4. The Manitoba boundary.
5. The claims on account of the "Alabama," "Shenandoah," and certain other cruizers of the so-styled Confederate States.
6. The San Juan water boundary.
7. The claims of British subjects arising out of the Civil War.
8. The claims of the people of Canada on account of the Fenian raids.
9. The revision of the rules of Maritime Neutrality.

Copies of all the correspondence which has been presented to Parliament respecting these questions will be forwarded for your use.

1. *The Fisheries.*

On the termination of the Reciprocity Treaty of the 5th of June, 1854, by the United States' Government, the discussions respecting the rights of American fishermen under Article I of the Convention of the 20th of October, 1818, which had been set at rest by the Reciprocity Treaty, were revived, and, although temporary measures were taken to avoid pressing with severity upon American fishermen by the adoption of a system of licenses, it has been found impracticable to continue that system indefinitely, and, on its withdrawal, much excitement has been occasioned among the coast population of the Eastern States of the Union by the capture of boats engaged in illegal fishing, contrary to the Convention of 1818.

The correspondence will put you in possession of the facts of the several captures, and enable you to judge, and explain if necessary, how far the pretensions of the American

fishermen are exaggerated, and the leniency with which they have been treated under the directions of Her Majesty's Government and of the Government of the Dominion by the officers charged with the protection of the British Fisheries.

Irrespective, however, of the captures and confiscations of boats during the recent fishing season, there are, and have been for many years, differences of interpretation put upon the Convention of 1818 by the respective Governments, which might, at any time, rise into serious importance.

The two chief questions are: As to whether the expression "three marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions" should be taken to mean a limit of three miles from the coast line or a limit of three miles from a line drawn from headland to headland; and whether the proviso that "the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter, and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever," is intended to exclude American vessels from coming inshore to traffic, tranship fish, purchase stores, hire seamen, &c.

Her Majesty's Government would be glad to learn that you were able to arrive at a conclusive understanding with the Commissioners of the United States upon the disputed interpretation of the Convention of 1818; but they fear that you will find it expedient that a settlement should be arrived at by some other means, in which case they will be prepared for the whole question of the relations between the United States and the British Possessions in North America, as regards the Fisheries, being referred for consideration and inquiry to an International Commission, on which two Commissioners to be hereafter appointed, in consultation with the Government of the Dominion, should be the British Representatives.

Should the Government of the United States concur in this, it would be advisable that no time should be lost in appointing Commissioners on their side, and in the Commission commencing its labours; and, as it is scarcely probable that the Commissioners will be able to report, and a Treaty be framed, before the commencement of the next fishing season, it would be also desirable that you should agree upon some means, by license or otherwise, by which disputes may be avoided in the meanwhile.

2. *Free Navigation of the River St. Lawrence, and Privilege of Passage through the Canadian Canals.*

The President of the United States, in his Message at the opening of Congress in December last, referred to the claim of free navigation of the River St. Lawrence as being an occasion of difference between the two countries.

The IVth Article of the Reciprocity Treaty provided that the citizens and inhabitants of the United States should be allowed to navigate the River St. Lawrence and the canals of Canada; and Her Majesty's Government are not aware that any practical difficulty as to the free navigation of the St. Lawrence has arisen since the abrogation of that Treaty.

The exclusive right to the navigation of the St. Lawrence was maintained by this country throughout the discussions between the two Governments on the subject in 1824-27, and has been acknowledged as existing by this Article of the Reciprocity Treaty, under which the British Government retained the right of suspending the privilege.

Her Majesty's Government are, nevertheless, now willing to admit the principle of the navigation of the St. Lawrence being free to the citizens of the United States, subject to such tolls and regulations as may be imposed equally on British subjects.

This, however, cannot extend, except as a special privilege, to the passage through the canals constructed by Canadian enterprize through British territory, without which, from the strength of the current and dangerous rapids, the navigation of the St. Lawrence cannot be profitably conducted; and the best course will probably be found to be to refer these questions for detailed examination and mutual arrangement in relation to the transit of goods in bond through Maine, St. John River lumber trade, navigation of Lake Michigan, passage through the canals in United States' territory, and other similar matters, to the Commission to be appointed to consider and report upon the Fisheries.

4. *The Manitoba Boundary.*

The President has already intimated to Congress that he is of opinion that the survey of the boundary along the 49th parallel, which has only been carried out across the Rocky Mountains to the Gulf of Georgia, should be completed from the Lake of the Woods to the foot of the Rocky Mountains.

In this Her Majesty's Government concur, and will be ready to appoint a Commission for the purpose whenever the United States' Government think fit.

5. *The "Alabama," "Shenandoah," &c., claims.*

Under this head are comprised the claims against Great Britain for damages sustained by the depredations of the "Alabama," "Shenandoah," and "Georgia," the vessels which were furnished on account of the so-styled Confederate States and armed outside of British jurisdiction, and of the "Florida" which, though built in England, was armed and equipped in the port of Mobile.

The history of these vessels is so fully explained in the long correspondence which has taken place with regard to them, that it is unnecessary for me now to do more than point out that the claims which have been preferred on account of the "Alabama" stand on a different footing to those arising from the captures made by the other cruizers; in so far as the "Alabama" escaped from Liverpool after evidence had been supplied by the United States' Minister of the service for which she was intended.

Her Majesty's Government adhere to the principle of arbitration for the settlement of these claims, which was recognized and adopted in the Convention signed by Lord Clarendon and Mr. Reverdy Johnson as being, in their opinion, the most appropriate mode of settling this question; and, should arbitration be adopted, Her Majesty's Government would concur, if the United States' Government proposed it, in Jurists properly selected being made the Arbitrators instead of a Sovereign or State, as provided in the late Convention.

Although, however, Her Majesty's Government are of opinion that arbitration is the most appropriate mode of settlement, you are at liberty to transmit for their consideration any other proposal which may be suggested for determining and closing the question of these claims.

For the escape of the "Alabama" and consequent injury to the commerce of the United States, Her Majesty's Government authorize you to express their regret in such terms as would be agreeable to the Government of the United States and not inconsistent with the position hitherto maintained by Her Majesty's Government as to the international obligations of neutral nations.

6.—*The San Juan Water Boundary.*

The line of water boundary under the 1st Article of the Treaty of June 15, 1846, upon which the British and American Commissioners appointed for its demarcation differed, was proposed by Lord Russell as a fit subject for arbitration in 1859; but, owing to the Civil War, the negotiations then instituted were not brought to a conclusion, and it was not until the 14th of January, 1869, that a Convention was signed between Lord Clarendon and Mr. Reverdy Johnson for referring the matter to an Arbitrator; the President of the Swiss Confederation being selected at the instance of the Government of the United States.

Although this Convention was recommended by the Senate Committee of Foreign Affairs for ratification,* it has not been brought before the Senate, and the period within which its ratification should have taken place has now expired.

This delay has been accounted for by the United States' Government as having been occasioned by the delay, necessarily unavoidable, in carrying through the Imperial Parliament the measures required for enabling the Naturalization Treaty to be concluded; the two Treaties having been in the first instance included in the same negotiation under the Protocol of the 10th of November, 1868, upon which the Treaty of the 14th of January, 1869, was framed.

The Naturalization Treaty having been ratified some months ago, Her Majesty's Government trust that the Government of the United States will no longer hesitate to act upon the Water Boundary Treaty, which should in that case be appended to and form part of the General Treaty for the mode of settlement of all outstanding differences which you are empowered to sign.

Should, however, a form of arbitration admitting of more free discussion be preferred, Her Majesty's Government would assent to such a proposal.

7.—*The Claims of British Subjects.*

Throughout the negotiations on the "Alabama," "Shenandoah," &c., claims, Her Majesty's Government have always urged that any satisfactory settlement of those claims must be accompanied by a simultaneous settlement of the claims of British subjects

* See "North America," No. 1 (1869), page 44.

arising out of the civil war, and provision was made for this purpose in the Claims Convention.

Her Majesty's Government would expect that the Government of the United States would readily consent to all claims of British subjects against the United States, or of United States' citizens against Great Britain, being referred to a Mixed Commission, formed of one Commissioner from each country and an Umpire, as was done under the Convention of the 8th of February, 1853.

8.—*The Claims of the People of Canada on account of the Fenian Raids.*

In connection with the claims of British subjects there is a claim on the part of the people of the Dominion of Canada for losses in life and property and expenditure, occasioned by the filibustering raids on the Canadian frontier, carried on from the territory of the United States in the years 1866 and 1870.

The Government of the Dominion having solicited Her Majesty's Government to bring this claim before the Government of the United States, were requested some time ago to prepare a statement to be submitted to that Government, but it has not yet been received.

In the meanwhile the accompanying account of the Fenian Brotherhood, which has been drawn up by Lord Tenterden, will supply you with full information as to the encouragement and support rendered in the United States to this and other Irish-American revolutionary societies.

9.—*Revision of Rules of Maritime Neutrality.*

It would be desirable to take this opportunity to consider whether it might not be the interest of both Great Britain and the United States to lay down certain rules of international comity in regard to the obligations of maritime neutrality, not only to be acknowledged for observance in their future relations, but to be recommended for adoption to the other Maritime Powers.

I have thus touched briefly upon the subjects likely principally to engage your attention, and have indicated the manner in which they may be possibly treated; but Her Majesty's Government wish you to understand that you are not thereby precluded from entertaining the consideration of other questions or making any suggestions you may think proper for their settlement.

Her Majesty's Government request, however, that if the mode of dealing with any particular matter which you may be disposed to agree to, should vary materially from the manner of settlement to which I have informed you Her Majesty's Government are prepared at once to assent, or, in case of any disagreement of importance occurring between yourselves and the American High Commissioners, you should at once report by telegraph and await further instructions.

I am, &c.
(Signed) GRANVILLE.

No. 2.

Earl Granville to Her Majesty's High Commissioners.

My Lord and Gentlemen, *Foreign Office, February* 9, 1871.

WITH reference to my other despatch of this day's date, in which I have adverted to the revision of the rules of maritime neutrality as being one of the subjects which will probably be presented for your consideration, I have to state to you that the extent to which a neutral country may be hereafter held justly liable for the dispatch, after notice, of a vessel under similar circumstances to those in the case of the "Alabama" cannot be precisely defined in the present stage of the controversy; but there are other points in which it may be convenient to you to be informed beforehand that this Government are willing to enter into an agreement.

These are:—

That no vessel employed in the military or naval service of any belligerent which shall have been equipped, fitted out, armed, or dispatched contrary to the neutrality of neutral State, should be admitted into any port of that State.

That prizes captured by such vessels, or otherwise captured in violation of the

neutrality of any State, should, if brought within the jurisdiction of that State, be restored.

That, in time of war, no vessel should be recognized as a ship of war, or received in any port of a neutral State as a ship of war, which has not been commissioned in some port in the actual occupation of the Government by whom her commission is issued.

The first of these Rules has been incorporated into the Foreign Enlistment Act, passed during the last year, and both the first and second were included in the Report of the Royal Commission for inquiring into the Neutrality Laws

I am, &c.
(Signed) GRANVILLE.

No. 3.

Earl Granville to the Lord High Commissioners.

My Lord and Gentlemen, *Foreign Office, February* 9, 1871.

I HAVE to inform you that Lord Tenterden has been appointed Secretary to the High Commission, and will proceed to Washington accordingly.

I am, &c.
(Signed) GRANVILLE.

No. 4.

Protocols of Conferences between the High Commissioners on the part of Great Britain and the High Commissioners on the part of the United States of America.

1st Protocol of Conference between the High Commissioners on the part of Great Britain and the High Commissioners on the part of the United States of America.

Washington, February 27, 1871.

THE High Commissioners having met, their full powers were respectively produced, which were found satisfactory, and copies thereof exchanged, as follows:—

"VICTORIA R.

"Victoria, by the grace of God, Queen of the United Kingdom of Great Britain and Ireland, Defender of the Faith, &c., &c., &c., To all and singular to whom these Presents shall come, Greeting:

"Whereas, for the purpose of discussing in a friendly spirit with Commissioners to be appointed on the part of Our Good Friends the United States of America, the various questions on which differences have arisen between Us and Our said Good Friends, and of treating for an Agreement as to the mode of their amicable settlement, We have judged it expedient to invest fit persons with full power to conduct on Our part the discussions in this behalf:

"Know ye, therefore, that We, reposing especial trust and confidence in the wisdom, loyalty, diligence, and circumspection of Our right trusty and right well-beloved Cousin and Councillor George Frederick Samuel, Earl de Grey and Ripon, Viscount Goderich, a Peer of Our United Kingdom, President of Our Most Honourable Privy Council, Knight of Our Most Noble Order of the Garter, &c., &c., of Our right trusty and well-beloved Councillor Sir Stafford Henry Northcote, Baronet, a Member of Parliament, Companion of Our Most Honourable Order of the Bath, &c., &c.; of Our trusty and well-beloved Sir Edward Thornton, Knight Commander of Our Most Honourable Order of the Bath, Our Envoy Extraordinary and Minister Plenipotentiary to Our Good Friends the United States of America, &c., &c.; of Our trusty and well-beloved Sir John Alexander Macdonald, Knight Commander of Our Most Honourable Order of the Bath, a Member of Our Privy Council for Canada, and Minister of Justice and Attorney-General in Our Dominion of Canada, &c., &c.; and of Our trusty and well-beloved Montague Bernard, Esquire, Chichele Professor of International Law in the University of Oxford;—have named, made, constituted, and appointed, as We do by these presents name, make, constitute, and appoint them Our undoubted High Commissioners, Procurators, and Plenipotentiaries: Giving to them, or to any three or more of them, all manner of power and authority to treat, adjust, and conclude with such Minister or Ministers as may be vested with similar power and authority on the part of Our Good Friends the United States of America, any Treaties, Conventions, or Agreements that may tend to the attainment of the above-mentioned end, and to sign for Us and in Our name everything so agreed upon and concluded, and to do and transact all such other matters as may appertain to the

finishing of the aforesaid work in as ample manner and form, and with equal force and efficacy, as We Ourselves could do if personally present: Engaging and promising upon Our Royal Word, that whatever things shall be so transacted and concluded by Our said High Commissioners, Procurators, and Plenipotentiaries shall be agreed to, acknowledged, and accepted by Us in the fullest manner, and that We will never suffer, either in the whole or in part, any person whatsoever to infringe the same, or act contrary thereto, as far as it lies in Our power.

"In witness whereof We have caused the Great Seal of Our United Kingdom of Great Britain and Ireland to be affixed to these Presents, which We have signed with Our Royal Hand.

"Given at Our Court at Windsor Castle, the sixteenth day of February, in the year of Our Lord one thousand eight hundred and seventy-one, and in the thirty-fourth year of Our reign."

"Ulysses S. Grant, President of the United States of America, to all who shall see these presents, greeting:

"Know ye that, reposing special trust and confidence in the integrity and ability of Hamilton Fish, Secretary of State, Robert C. Schenck, Envoy Extraordinary and Minister Plenipotentiary to Great Britain, Samuel Nelson, an Associate Justice of the Supreme Court of the United States, Ebenezer R. Hoar, of Massachusetts, and George H. Williams of Oregon, I have nominated and, by and with the advice and consent of the Senate, do appoint them jointly and severally, to be Commissioners on the part of the United States, in a Joint High Commission between the United States and Great Britain; hereby empowering them, jointly and severally, to meet the Commissioners appointed or to be appointed on behalf of Her Britannic Majesty, and with them to treat and discuss the mode of settlement of the different questions which shall come before the said Joint High Commission, and the said office to hold and exercise during the pleasure of the President of the United States for the time being.

"In testimony whereof I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed.

"Given under my hand at the city of Washington, this 10th day of February, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States of America the ninety-fifth.

[Seal.] (Signed) "U. S. GRANT.

"By the President:

(Signed) "HAMILTON FISH, *Secretary of State.*"

It was proposed by the British High Commissioners that Mr. Fish, Secretary of State of the United States, should preside.

The United States Commissioners stated that, although appreciating the proposal, they did not consider it necessary that a President should be named.

The High Commissioners, on the suggestion of Mr. Fish, requested that Lord Tenterden, Secretary of the British High Commission, and Mr. Bancroft Davies, Assistant-Secretary of State of the United States, acting as Secretary to the United States High Commission, to undertake the duties of Joint Protocolists.

The High Commissioners then agreed that the subjects for discussion should be those mentioned in the following correspondence which had taken place between the two Governments.

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1. *Sir E. Thornton to Mr. Fish, January* 26, 1871.

[See "North America, No. 1 (1871)," Inclosure 1 in No. 1.]

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2. *Mr. Fish to Sir E. Thornton, January* 30, 1871.

[Ibid., Inclosure 2 in No. 1.]

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3. *Sir E. Thornton to Mr. Fish, February* 1, 1871.

[Ibid., Inclosure 3 in No. 1.]

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4. *Mr. Fish to Sir E. Thornton, February* 3, 1871.

[Ibid., Inclosure 4 in No. 1.]

The Commissioners further determined that the discussion might include such other matters as might be mutually agreed upon.

The meeting of the High Commissioners was then adjourned to the 4th of March.

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

IInd Protocol of Conference between the High Commissioners on the part of Great Britain and the High Commissioners on the part of the United States of America.

Washington, March 4, 1871.

THE High Commissioners having met, the Protocol of the Conference held on the 27th of February was read and confirmed.

At the commencement of the Conference the United States' High Commissioners called attention to the provision in the Constitution of the United States by which the advice and consent of the Senate is required for the ratification of any Treaty which may be signed under the authority of the President.

The British High Commissioners stated that they were acquainted with this provision.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The Conference was adjourned to the 6th of March.

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

IIIrd Protocol of Conference between the High Commissioners on the part of Great Britain and the High Commissioners on the part of the United States of America.

Washington, March 6, 1871.

THE Commissioners having met, the Protocol of the Conference held on the 4th of March was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The Conference was adjourned to the 8th of March.

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

[The subsequent Protocols to No. XXXIV are to the same effect as Protocol No. III.]

XXXVth Protocol of Conference between the High Commissioners on the part of Great Britain and the High Commissioners on the part of the United States of America.

Washington, May 3, 1871.

THE High Commissioners having met, the Protocol of the Conference held on the 25th of April was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The American Commissioners produced the following further full-power, under the seal of the United States, authorizing them to conclude and sign a Treaty: —

"Ulysses S. Grant, President of the United States of America, to all to whom these presents shall come, greeting:

"Know ye that whereas by my power bearing date the 10th day of February last, Hamilton Fish, Secretary of State, Robert C. Schenck, Envoy Extraordinary and Minister Plenipotentiary to Great Britain, Samuel Nelson, an Associate Justice of the Supreme Court of the United States, Ebenezer R. Hoar of Massachusetts, and George H. Williams of Oregon, were authorized to meet the Commissioners appointed, or to be appointed, on behalf of Her Britannic Majesty, and with them to treat and discuss the mode of settlement of the different questions which should come before them;

"And whereas that meeting and discussion have taken place, and the said mode of settlement has been agreed upon:

"Now, therefore, I, Ulysses S. Grant, President of the United States, do hereby appoint the said Hamilton Fish, Robert C. Schenck, Samuel Nelson, Ebenezer R. Hoar, and George H. Williams, jointly and severally, Plenipotentiaries for and in behalf of the United States, and do authorize them, and any or either of them, to conclude and sign any Treaty or Treaties touching the premises, for the final ratification of the President of

the United States, by and with the advice and consent of the Senate, if such advice and consent be given.

"In witness whereof I have caused the seal of the United States to be hereunto affixed.

"Given under my hand at the city of Washington, the second day of May, in the year of our Lord one thousand eight hundred and seventy-one, and of the independence of the United States of America the ninety-fifth.

(Signed) "U. S. GRANT.

"By the President:

(Signed) "HAMILTON FISH, *Secretary of State.*"

This full-power was examined by the British Commissioners and found satisfactory.

The Joint High Commissioners determined that they would embody in a Protocol a statement containing an account of the negotiations upon the various subjects included in the Treaty, and they instructed the Joint Protocolists to prepare such an account in the order in which the subjects are to stand in the Treaty.

The Conference was adjourned to the 4th of May.

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

XXXVIth Protocol of Conference between the High Commissioners on the part of Great Britain and the High Commissioners on the part of the United States of America.

Washington, May 4, 1871.

THE High Commissioners having met, the Protocol of the Conference held on the 3rd of May was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them,

The statement prepared by the Joint Protocolists, in accordance with the request of the Joint High Commissioners at the last Conference, was then read as follows:—

Statement.

ARTICLES I TO XI.

At the Conference held on the 8th of March, the American Commissioners stated that the people and Government of the United States felt that they had sustained a great wrong, and that great injuries and losses were inflicted upon their commerce and their material interests by the course and conduct of Great Britain during the recent rebellion in the United States; that what had occurred in Great Britain and her colonies during that period had given rise to feelings in the United States which the people of the United States did not desire to cherish toward Great Britain; that the history of the "Alabama" and other cruizers which had been fitted out, or armed, or equipped, or which had received augmentation of force in Great Britain or in her colonies, and of the operations of those vessels, showed extensive direct losses in the capture and destruction of a large number of vessels with their cargoes, and in the heavy national expenditures in the pursuit of the cruizers, and indirect injury in the transfer of a large part of the American commercial marine to the British flag, in the enhanced payments of insurance, in the prolongation of the war, and in the addition of a large sum to the cost of the war and the suppression of the rebellion; and also showed that Great Britain, by reason of failure in the proper observance of her duties as a neutral, had become justly liable for the acts of those cruizers and of their tenders; that the claims for the loss and destruction of private property which had thus far been presented amounted to about fourteen millions of dollars, without interest, which amount was liable to be greatly increased by claims which had not been presented; that the cost to which the Government had been put in the pursuit of cruizers could easily be ascertained by certificates of Government accounting officers; that in the hope of an amicable settlement no estimate was made of the indirect losses, without prejudice, however, to the right to indemnification on their account in the event of no such settlement being made.

The American Commissioners further stated that they hoped that the British Commissioners would be able to place upon record an expression of regret by Her Majesty's Government for the depredations committed by the vessels whose acts were now under discussion. They also proposed that the Joint High Commission should agree upon a sum which should be paid by Great Britain to the United States, in satisfaction of all the claims and the interest thereon.

The British Commissioners replied that Her Majesty's Government could not admit that Great Britain had failed to discharge towaad the United States the duties imposed on

her by the rules of international law, or that she was justly liable to make good to the United States the losses occasioned by the acts of the cruisers to which the American Commissioners had referred. They reminded the American Commissioners that several vessels, suspected of being designed to cruise against the United States, including two iron-clads, had been arrested or detained by the British Government, and that that Government had in some instances not confined itself to the discharge of international obligations, however widely construed; as, for instance, when it acquired at a great cost to the country the control of the Anglo-Chinese Flotilla, which, it was apprehended, might be used against the United States.

They added that although Great Britain had, from the beginning, disavowed any responsibility for the acts of the "Alabama" and the other vessels, she had already shown her willingness, for the sake of the maintenance of friendly relations with the United States, to adopt the principle of arbitration, providing that a fitting arbitrator could be found, and that an agreement could be come to as to the points to which arbitration should apply. They would, therefore, abstain from replying in detail to the statement of the American Commissioners, in the hope that the necessity for entering upon a lengthened controversy might be obviated by the adoption of so fair a mode of settlement as that which they were instructed to propose; and they had now to repeat, on behalf of their Government, the offer of arbitration.

The American Commissioners expressed their regret at this decision of the British Commissioners, and said further that they could not consent to submit the question of the liability of Her Majesty's Government to arbitration unless the principles which should govern the Arbitrator in the consideration of the facts could be first agreed upon.

The British Commissioners replied that they had no authority to agree to a submission of these claims to an Arbitrator with instructions as to the principles which should govern him in the consideration of them. They said that they should be willing to consider what principles should be adopted for observance in future; but that they were of opinion that the best mode of conducting an arbitration was to submit the facts to the Arbitrator, and leave him free to decide upon them after hearing such arguments as might be necessary.

The American Commissioners replied that they were willing to consider what principles should be laid down for observance in similar cases in future, with the understanding that any principles that should be agreed upon should be held to be applicable to the facts in respect to the "Alabama" claims.

The British Commissioners replied that they could not admit that there had been any violation of existing principles of international law, and that their instructions did not authorize them to accede to a proposal for laying down rules for the guidance of the Arbitrator, but that they would make known to their Government the views of the American Commissioners on the subject.

At the respective Conferences on March 9, March 10, March 13, and March 14, the Joint High Commission considered the form of the declaration of principles or rules which the American Commissioners desired to see adopted for the instruction of the Arbitrator and laid down for observance by the two Governments in future.

At the close of the Conference of the 14th of March the British Commissioners reserved several questions for the consideration of their Government.

At the Conference on the 5th of April the British Commissioners stated that they were instructed by Her Majesty's Government to declare that Her Majesty's Government could not assent to the proposed rules as a statement of principles of international law which were in force at the time when the "Alabama" claims arose, but that Her Majesty's Government, in order to evince its desire of strengthening the friendly relations between the two countries, and of making satisfactory provision for the future, agreed that in deciding the questions between the two countries arising out of those claims, the Arbitrator should assume that Her Majesty's Government had undertaken to act upon the principles set forth in the rules which the American Commissioners had proposed, viz.:

That a neutral Government is bound, first, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

Secondly. Not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

Thirdly. To exercise due diligence in its own ports or waters, and as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

It being a condition of this undertaking that these obligations should in future be held to be binding internationally between the two countries.

It was also settled that in deciding the matters submitted to him, the Arbitrator should be governed by the foregoing rules, which had been agreed upon as rules to be taken as applicable to the case, and by such principles of international law, not inconsistent therewith, as the Arbitrator should determine to have been applicable to the case.

The Joint High Commission then proceeded to consider the form of submission and the manner of constituting a tribunal of arbitration.

At the Conferences on the 6th, 8th, 9th, 10th, and 12th of April, the Joint High Commission considered and discussed the form of submission, the manner of the award, and the mode of selecting the Arbitrators.

The American Commissioners, referring to the hope which they had expressed on the 8th of March, inquired whether the British Commissioners were prepared to place upon record an expression of regret by Her Majesty's Government for the depredations committed by the vessels whose acts were now under discussion; and the British Commissioners replied that they were authorized to express, in a friendly spirit, the regret felt by Her Majesty's Government for the escape, under whatever circumstances, of the "Alabama" and other vessels from British ports, and for the depredations committed by those vessels.

The American Commissioners accepted this expression of regret as very satisfactory to them and as a token of kindness, and said that they felt sure it would be so received by the Government and people of the United States.

In the Conference on the 13th of April, the Treaty Articles I to XI were agreed to.

Articles XII to XVII.

At the Conference on the 4th of March it was agreed to consider the subjects referred to the Joint High Commission by the respective Governments in the order in which they appeared in the correspondence between Sir Edward Thornton and Mr. Fish, and to defer the consideration of the adjustment of "all other claims, both of British subjects and citizens of the United States, arising out of acts committed during the recent civil war in this country," as described by Sir Edward Thornton in his letter of February 1, until the subjects referred to in the previous letters should have been disposed of.

The American Commissioners said that they supposed that they were right in their opinion that British laws prohibit British subjects from owning slaves; they therefore inquired whether any claim for slaves, or for alleged property or interest in slaves, can or will be presented by the British Government, or in behalf of any British subject, under the Treaty now being negotiated, if there be in the Treaty no express words excluding such claims.

The British Commissioners replied, that by the law of England British subjects had long been prohibited from purchasing or dealing in slaves, not only within the dominions of the British Crown, but in any foreign country; and that they had no hesitation in saying that no claim on behalf of any British subject, for slaves or for any property or interest in slaves, would be presented by the British Government.

Referring to the paragraph in Sir Edward Thornton's letter of January 26th, relating to "the mode of settling the different questions which have arisen out of the Fisheries, as well as all those which affect the relations of the United States towards Her Majesty's Possessions in North America," the British Commissioners proposed that the Joint High Commission should consider the claims for injuries which the people of Canada had suffered from what were known as the Fenian raids.

The American Commissioners objected to this, and it was agreed that the subject might be brought up again by the British Commissioners in connection with the subjects referred to by Sir Edward Thornton in his letter of February 1.

At the Conference on the 14th of April the Joint High Commission took into consideration the subjects mentioned by Sir Edward Thornton in that letter.

The British Commissioners proposed that a Commission for the consideration of these claims should be appointed, and that the Convention of 1853 should be followed as a precedent. This was agreed to, except that it was settled that there should be a third Commissioner instead of an Umpire.

At the Conference on the 15th of April, the Treaty Articles XII to XVII were agreed to.

At the Conference on the 26th of April the British Commissioners again brought before the Joint High Commission the claims of the people of Canada for injuries suffered

from the Fenian raids. They said that they were instructed to present these claims, and to state that they were regarded by Her Majesty's Government as coming within the class of subjects indicated by Sir Edward Thornton in his letter of January 26, as subjects for the consideration of the Joint High Commission.

The American Commissioners replied that they were instructed to say that the Government of the United States did not regard these claims as coming within the class of subjects indicated in that letter as subjects for the consideration of the Joint High Commission, and that they were without any authority from their Government to consider them. They therefore declined to do so.

The British Commissioners stated that, as the subject was understood not to be within the scope of the instructions of the American Commissioners, they must refer to their Government for further instructions upon it.

At the Conference on the 3rd May the British Commissioners stated that they were instructed by their Government to express their regret that the American Commissioners were without authority to deal with the question of the Fenian raids, and they inquired whether that was still the case.

The American Commissioners replied that they could see no reason to vary the reply formerly given to this proposal; that in their view the subject was not embraced in the scope of the correspondence between Sir Edward Thornton and Mr. Fish under either of the letters of the former; and that they did not feel justified in entering upon the consideration of any class of claims not contemplated at the time of the creation of the present Commission, and that the claims now referred to did not commend themselves to their favour.

The British High Commissioners said that under these circumstances they would not urge further that the settlement of these claims should be included in the present Treaty, and that they had the less difficulty in doing so as a portion of the claims were of a constructive and inferential character.

Articles XVIII to XXV.

At the Conference on the 6th of March the British Commissioners stated that they were prepared to discuss the question of the Fisheries, either in detail or generally, so as either to enter into an examination of the respective rights of the two countries under the Treaty of 1818, and the general law of nations, or to approach at once the settlement of the question on a comprehensive basis.

The American Commissioners said, that with the view of avoiding the discussion of matters which subsequent negotiation might render it unnecessary to enter into, they thought it would be preferable to adopt the latter course, and inquired what, in that case, would be the basis which the British Commissioners desired to propose.

The British Commissioners replied, that they considered that the Reciprocity Treaty of 5th June, 1854, should be restored in principle.

The American Commissioners declined to assent to a renewal of the former Reciprocity Treaty.

The British Commissioners then suggested that, if any considerable modification were made in the Tariff arrangements of that Treaty, the coasting trade of the United States and of Her Britannic Majesty's possessions in North America should be reciprocally thrown open, and that the navigation of the River St. Lawrence and of the Canadian Canals should be also thrown open to the citizens of the United States on terms of equality with British subjects.

The American Commissioners declined this proposal, and objected to a negotiation on the basis of the Reciprocity Treaty. They said that that Treaty had proved unsatisfactory to the people of the United States, and consequently had been terminated by notice from the Government of the United States, in pursuance of its provisions. Its renewal was not in their interest, and would not be in accordance with the sentiments of their people. They further said that they were not at liberty to treat of the opening of the coasting trade of the United States to the subjects of Her Majesty residing in her possessions in North America. It was agreed that the questions relating to the navigation of the River St. Lawrence, and of the Canadian Canals, and to other commercial questions affecting Canada, should be treated by themselves.

The subject of the Fisheries was further discussed at the Conferences on the 7th, 20th, 22nd, and 25th of March. The American Commissioners stated that if the value of the inshore fisheries could be ascertained, the United States might prefer to purchase, for a sum of money, the right to enjoy, in perpetuity, the use of these inshore fisheries in common with British fishermen, and mentioned 1,000,000 dollars as the sum they were

prepared to offer. The British Commissioners replied that this offer was, they thought wholly inadequate, and that no arrangement would be acceptable of which the admission into the United States, free of duty, of fish the produce of the British fisheries did not form a part; adding that any arrangement for the acquisition by purchase of the inshore fisheries in perpetuity was open to grave objection.

The American Commissioners inquired whether it would be necessary to refer any arrangement for purchase to the Colonial or Provincial Parliaments.

The British Commissioners explained that the fisheries within the limits of maritime jurisdiction were the property of the several British Colonies, and that it would be necessary to refer any arrangement which might affect Colonial property or rights to the Colonial or Provincial Parliaments; and that legislation would also be required on the part of the Imperial Parliament. During these discussions the British Commissioners contended that these inshore fisheries were of great value, and that the most satisfactory arrangement for their use would be a reciprocal tariff arrangement, and reciprocity in the coasting trade; and the American Commissioners replied that their value was over-estimated; that the United States desired to secure their enjoyment, not for their commercial or intrinsic value, but for the purpose of removing a source of irritation; and that they could hold out no hope that the Congress of the United States would give its consent to such a tariff arrangement as was proposed, or to any extended plan of reciprocal free admission of the products of the two countries; but that, inasmuch as one branch of Congress had recently, more than once, expressed itself in favour of the abolition of duties on coal and salt, they would propose that coal, salt, and fish be reciprocally admitted free; and that, inasmuch as Congress had removed the duty from a portion of the lumber heretofore subject to duty, and as the tendency of legislation in the United States was towards the reduction of taxation and of duties in proportion to the reduction of the public debt and expenses, they would further propose that lumber be admitted free from duty from and after the 1st of July, 1874, subject to the approval of Congress, which was necessary on all questions affecting import duties.

The British Commissioners, at the Conference on the 17th of April, stated that they had referred this offer to their Government, and were instructed to inform the American Commissioners that it was regarded as inadequate, and that Her Majesty's Government considered that free lumber should be granted at once, and that the proposed tariff concessions should be supplemented by a money payment.

The American Commissioners then stated that they withdrew the proposal which they had previously made of the reciprocal free admission of coal, salt, and fish, and of lumber after July 1, 1874; that that proposal had been made entirely in the interest of a peaceful settlement, and for the purpose of removing a source of irritation and of anxiety; that its value had been beyond the commercial or intrinsic value of the rights to have been acquired in return; and that they could not consent to an arrangement on the basis now proposed by the British Commissioners; and they renewed their proposal to pay a money equivalent for the use of the inshore fisheries. They further proposed that, in case the two Governments should not be able to agree upon the sum to be paid as such an equivalent, the matter should be referred to an impartial Commission for determination.

The British Commissioners replied that this proposal was one on which they had no instructions, and that it would not be possible for them to come to any arrangement except one for a term of years and involving the concession of free fish and fish-oil by the American Commissioners; but that if free fish and fish-oil were conceded, they would inquire of their Government whether they were prepared to assent to a reference to arbitration as to money payment.

The American Commissioners replied that they were willing, subject to the action of Congress, to concede free fish and fish-oil as an equivalent for the use of the inshore fisheries, and to make the arrangement for a term of years; that they were of opinion that free fish and fish-oil would be more than an equivalent for those fisheries, but that they were also willing to agree to a reference to determine that question and the amount of any money payment that might be found necessary to complete an equivalent, it being understood that legislation would be needed before any payment could be made.

The subject was further discussed in the Conferences of April 18 and 19, and the British Commissioners having referred the last proposal to their Government and received instructions to accept it, the Treaty Articles XVIII to XXV were agreed to at the Conference on the 22nd of April.

Articles XXVI to XXXIII.

At the Conference on the 6th of March the British Commissioners proposed that the

Reciprocity Treaty of June 5, 1854, should be restored in principle, and that, if any considerable modifications in the Tariff arrangements in force under it were made, the coasting trade of the United States and of Her Britannic Majesty's Possessions in North America should be reciprocally thrown open, and that the navigation of the River St. Lawrence and of the Canadian Canals should be thrown open to the citizens of the United States on terms of equality with British subjects.

The American Commissioners declined this proposal, and in the subsequent negotiations the question of the Fisheries was treated by itself.

At the Conference on the 17th March the Joint High Commission considered the subject of the American improvement of the navigation of the St. Clair Flats.

At the Conference on the 18th March the questions of the navigation of the River St. Lawrence and the Canals and the other subjects connected therewith were taken up.

The American Commissioners proposed to take into consideration the question of transit of goods in bond through Canada and the United States, which was agreed to.

The British Commissioners proposed to take into consideration the question of opening the coasting trade of the lakes reciprocally to each party, which was declined.

On the proposal of the British Commissioners it was agreed to take the question of transhipment into consideration.

The British Commissioners proposed to take into consideration the reciprocal registration of vessels, as between the Dominion of Canada and the United States, which was declined.

At the Conference on the 23rd March the transhipment question was discussed and postponed for further information on the motion of the American Commissioners.

The transit question was discussed, and it was agreed that any settlement that might be made should include a reciprocal arrangement in that respect for the period for which the Fishery Articles should be in force.

The question of the navigation of the River St. Lawrence and the Canals was taken up.

The British Commissioners stated that they regarded the concession of the navigation of Lake Michigan as an equivalent for the concession of the navigation of the River St. Lawrence.

As to the Canals they stated that the concession of the privilege to navigate them in their present condition, on terms of equality with British subjects, was a much greater concession than the corresponding use of the Canals offered by the United States.

They further said that the enlargement of the Canals would involve the expenditure of a large amount of money, and they asked what equivalent the American Commissioners proposed to give for the surrender of the right to control the tolls for the use of the Canals, either in their present state or after enlargement.

The American Commissioners replied that, unless the Welland Canal should be enlarged so as to accommodate the present course of trade, they should not be disposed to make any concessions; that in their opinion the citizens of the United States could now justly claim to navigate the River St. Lawrence in its natural state, ascending and descending, from the 45th parallel of north latitude, where it ceases to form the boundary between the two countries, from, to, and into the sea; and they could not concede that the navigation of Lake Michigan should be given or taken as an equivalent for that right; and they thought that the concession of the navigation of Lake Michigan and of the Canals offered by them was more than an equivalent for the concessions as to the Canadian Canals which were asked. They proposed, in connection with a reciprocal arrangement as to transit and transhipment, that Canada should agree to enlarge the Welland and St. Lawrence Canals, to make no discriminating tolls, and to limit the tolls to rates sufficient to maintain the Canals, pay a reasonable interest on the cost of construction and enlargement, and raise a sinking fund for the repaying within a reasonable time the cost of enlargement; and that the navigation of the River St. Lawrence, the Canadian Canals, the Canals offered by the United States, and Lake Michigan should be enjoyed reciprocally by citizens of the United States and by British subjects. This proposal was declined by the British Commissioners, who repeated that they did not regard the equivalent offered by the United States as at all commensurate with the concessions asked from Great Britain.

At the Conference on the 27th of March the proposed enlargement of the Canadian Canals was further discussed. It was stated on the part of the British Commissioners that the Canadian Government were now considering the expediency of enlarging the capacity of the Canals on the River St. Lawrence, and had already provided for the enlargement of the Welland Canal, which would be undertaken without delay.

The subject of the export duty in New Brunswick on American lumber floated down the River St. John was proposed for consideration by the American Commissioners.

At the Conference on the 22nd of April the British Commissioners proposed that the navigation of Lake Michigan should be given in exchange for the navigation of the River St. Lawrence; and that Her Majesty's Government should agree to urge upon the Dominion of Canada to give to the citizens of the United States the use of the Canadian Canals on terms of equality with British subjects; and that the Government of the United States should agree to urge upon the several States to give to British subjects the use of the several State Canals on terms of equality with citizens of the United States. They also proposed, as part of the arrangement, a reciprocal agreement as to transit and transhipment, and that the Government of Great Britain should urge upon New Brunswick not to impose export duties on the lumber floated down the River St. John for shipment to the United States.

The American Commissioners repeated their views as to the navigation of the River St. Lawrence in its natural state.

The British Commissioners replied that they could not admit the claims of American citizens to navigate the River St. Lawrence as of right; but that the British Government had no desire to exclude them from it. They however pointed out that there were certain rivers running through Alaska which should on like grounds be declared free and open to British subjects, in case the River St. Lawrence should be declared free.

The American Commissioners replied that they were prepared to consider that question. They also assented to the arrangement as to the Canals which was proposed by the British Commissioners, limiting it, as regarded American Canals, to the Canals connected with the navigation of the lakes or rivers traversed by or contiguous to the boundary line between the British and American possessions. They likewise agreed to give the right of navigating Lake Michigan for a term of years. They desired, and it was agreed, that the transhipment arrangement should be made dependent upon the non-existence of discriminating tolls or regulations on the Canadian Canals, and also upon the abolition of the New Brunswick export duty on American lumber intended for the United States. It was also agreed that the right of carrying should be made dependent upon the non-imposition of export duties on either side on the goods of the other party passing in transit.

The discussion of these subjects was further continued at the Conferences of the 24th, 25th, and 26th of April, and the Treaty Articles XXVI to XXXIII were agreed to at the Conference on the 3rd of May.

In the course of these discussions the British Commissioners called attention to the question of the survey of the boundary line along the forty-ninth parallel, which still remained unexecuted from the Lake of the Woods to the Rocky Mountains, and to which reference had been made in the President's Message.

The American Commissioners stated that the survey was a matter for administrative action, and did not require to be dealt with by a Treaty provision. The United States' Government would be prepared to agree with the British Government for the appointment of a Boundary Survey Commission, in the same manner as had been done in regard to the remainder of the boundary along the forty-ninth parallel, as soon as the legislative appropriations and other necessary arrangements could be made.

Articles XXXIV to XLII.

At the Conference on the 15th of March the British Commissioners stated that it was proposed that day to take up the North-West Water Boundary question; that the difference was one of long standing, which had more than once been the subject of negotiations between the two Governments, and that the negotiators had, in January 1869, agreed upon a Treaty. They then proposed that an arbitration of this question should be made upon the basis of the provisions of that Treaty.

The American Commissioners replied that, though no formal vote was actually taken upon it, it was well understood that that Treaty had not been favourably regarded by the Senate. They declined the proposal of the British Commissioners, and expressed their wish that an effort should be made to settle the question in the Joint High Commission.

The British Commissioners assented to this, and presented the reasons which induced them to regard the Rosario Straits as the channel contemplated by the Treaty of June 15, 1846.

The American Commissioners replied, and presented the reasons which induced them to regard the Haro Channel as the channel contemplated by that Treaty. They also produced in support of their views some original correspondence of Mr. Everett with his Government, which had not been alluded to in previous discussions of the question.

The British Commissioners replied that they saw in that correspondence no reason to

induce them to change the opinion which they had previously expressed. They then asked whether the American Commissioners had any further proposal to make.

The American Commissioners replied that, in view of the position taken by the British Commissioners, it appeared that the Treaty of June 15, 1846, might have been made under a mutual misunderstanding, and would not have been made had each Party understood at that time the construction which the other Party puts upon the language whose interpretation is in dispute; they therefore proposed to abrogate the whole of that part of the Treaty, and rearrange the boundary line which was in dispute before that Treaty was concluded.

The British Commissioners replied that the proposal to abrogate a Treaty was one of a serious character, and that they had no instructions which would enable them to entertain it; and at the Conference on the 20th of March the British Commissioners declined the proposal.

At the Conference on the 19th of April the British Commissioners proposed to the American Commissioners to adopt the Middle Channel (generally known as the Douglas Channel) as the channel through which the boundary line should be run, with the understanding that all the channels through the Archipelago should be free and common to both Parties.

The American Commissioners declined to entertain that proposal. They proposed that the Joint High Commission should recognize the Haro Channel as the channel intended by the Treaty of June 15, 1846, with a mutual agreement that no fortifications should be erected by either Party to obstruct or command it, and with proper provisions as to any existing proprietary rights of British subjects in the Island of San Juan.

The British Commissioners declined this proposal, and stated that, being convinced of the justice of their view of the Treaty, they could not abandon it except after a fair decision by an impartial Arbitrator. They therefore renewed their proposal for a reference to arbitration, and hoped that it would be seriously considered.

The American Commissioners replied that they had hoped that their last proposal would be accepted. As it had been declined, they would, should the other questions between the two Governments be satisfactorily adjusted, agree to a reference to arbitration to determine whether the line should run through the Haro Channel or through the Rosario Straits, upon the condition that either Government should have the right to include in the evidence to be considered by the Arbitrator such documents, official correspondence, and other official or public statements bearing on the subject of the reference as they may consider necessary to the support of their respective cases. This condition was agreed to.

The British Commissioners proposed that the Arbitrator should have the right to draw the boundary through an intermediate channel. The American Commissioners declined this proposal, stating that they desired a decision, not a compromise.

The British Commissioners proposed that it should be declared to be the proper construction of the Treaty of 1846 that all the channels were to be open to navigation by both Parties. The American Commissioners stated that they did not so construe the Treaty of 1846, and therefore could not assent to such a declaration.

The discussion of this subject was continued during this Conference, and in the Conference of the 22nd of April the Treaty Articles XXXIV to XLII were agreed to.

The Joint High Commissioners approved this Statement, and directed it to be entered in the Protocol.

The Conference was adjourned to the 6th of May.

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

XXXVIIth Protocol of Conference between the High Commissioners on the part of Great Britain and the High Commissioners on the part of the United States of America.

Washington, May 6, 1871.

THE High Commissioners having met, the Protocol of the Conference held on the 4th of May was read and confirmed.

Lord de Grey said that, as the Joint High Commission would not meet again after to-day, except for the purpose of signing the Treaty, he desired, on behalf of himself and his colleagues, to express their high appreciation of the manner in which Mr. Fish and his American colleagues had, on their side, conducted the negotiations. It had been most

gratifying to the British Commissioners to be associated with colleagues who were animated with the same sincere desire as themselves to bring about a settlement, equally honourable and just to both countries, of the various questions of which it had been their duty to treat, and the British Commissioners would always retain a grateful recollection of the fair and friendly spirit which the American Commissioners had displayed.

Mr. Fish, in behalf of the American Commissioners, said that they were gratefully sensible of the friendly words expressed by Lord de Grey, aud of the kind spirit which had prompted them. From the date of the first Conference the American Commissioners had been impressed by the earnestness of desire manifested by the British Commissioners to reach a settlement worthy of the two Powers who had committed to this Joint High Commission the treatment of various questions of peculiar interest, complexity, and delicacy. His colleagues and he could never cease to appreciate the generous spirit and the open and friendly manner in which the British Commissioners had met and discussed the several questions that had led to the conclusion of a Treaty which it was hoped would receive the approval of the people of both countries, and would prove the foundation of a cordial and friendly understanding between them for all time to come.

Mr. Fish further said that he was sure that every member of the Joint High Commission would desire to record his appreciation of the ability, the zeal, and the unceasing labour which the Joint Protocolists had exhibited in the discharge of their arduous and responsible duties, and that he knew that he only gave expression to the feelings of the Commissioners in saying that Lord Tenterden and Mr. Bancroft Davis were entitled to, and were requested to accept, the thanks of the Joint High Commission for their valuable services, and the great assistance which they had rendered with unvarying obligingness to the Commission.

Lord de Grey replied, on behalf of the British Commissioners, that he and his colleagues most cordially concurred in the proposal made by Mr. Fish that the thanks of the Joint High Commission should be tendered to Mr. Bancroft Davis and Lord Tenterden for their valuable services as Joint Protocolists. The British Commissioners were also quite as sensible as their American colleagues of the great advantage which the Commission had derived from the assistance which those gentlemen had given them in the conduct of the important negotiations in which they had been engaged.

Monday, the 8th of May, was appointed for the signature of the Treaty.

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

NORTH AMERICA. No. 3 (1871).

INSTRUCTIONS to Her Majesty's High Commissioners, and Protocols of Conferences held at Washington between February 27 and May 6, 1871.

Presented to both Houses of Parliament by Command of Her Majesty. 1871.

LONDON:
PRINTED BY HARRISON AND SONS.

NORTH AMERICA No. 1 (1872).

CASE

PRESENTED ON THE PART OF THE

GOVERNMENT OF HER BRITANNIC MAJESTY

TO THE

TRIBUNAL OF ARBITRATION

CONSTITUTED UNDER ARTICLE I OF THE TREATY CONCLUDED AT WASHINGTON ON THE 8TH MAY, 1871, BETWEEN HER BRITANNIC MAJESTY AND THE UNITED STATES OF AMERICA.

Presented to the House of Commons by Command of Her Majesty, in pursuance of their Address dated February 13, 1872.

LONDON.
PRINTED BY HARRISON AND SONS

RETURN to an Address of the Honourable the House of Commons, dated February 13, 1872;

for—

"A Copy of the English Case to be submitted to the Arbitrators at Geneva under the Treaty of Washington."

CASE.

GENERAL CONTENTS.

THE Case now presented to the Arbitrators on the part of the Government of Her Britannic Majesty comprehends a statement of the facts which that Government regards as material to a just adjudication on the Claims of the United States, and of some general propositions on which it intends to rely, believing them to be in accordance with the principles of international law and the practice of nations.

The contents of the Case are as follows :—

I. A Statement of the Matter referred to the Arbitrators, as it is understood by Her Britannic Majesty's Government ... ... Part I, pages 1—3

II. An Introductory Statement of the events which attended and followed the commencement of the Civil War in America, and of the course pursued by Great Britain and the other Maritime Powers in relation to the War, and particularly as to the reception of belligerent vessels of war into their ports and waters ... Part II, pages 4—22

III. A further Introductory Statemen on International Rights and Duties; on the powers which were possessed by Her Britannic Majesty's Government of preventing unlawful equipments; and setting forth the manner and circumstances in and under which these powers were exercised during the War ... ... Part III, pages 23—50

IV. Considerations proper to be kept in view by the Arbitrators in entering on the cases of the vessels specifically mentioned in the four following Parts, V, VI, VII, and VIII ... ... Part IV, pages 51—52

V. Statement of Facts relative to the Florida ... ... Part V, pages 53—80

VI. Statement of Facts relative to the Alabama ... ... Part VI, pages 81—119

VII. Statement of Facts relative to the Georgia ... ... Part VII, pages 120—135

VIII. Statement of Facts relative to the Shenandoah ... ... Part VIII, pages 136—162

IX. Recapitulation of the material facts stated in the preceding Parts Part IX, pages 163—165

X. Remarks in conclusion ... ... Part X, pages 166—168

The Appendix to the Case consists of Four Volumes, the contents of which are as follows :—

Vol. I. Correspondence relating to the Florida, Alabama, Georgia, and Shenandoah.

Vol. II. Correspondence relating to the Sumter, Nashville, Georgiana, Phantom, Southerner, Alexandra, and other vessels respecting which representations were made by the Government of the United States to that of Her Britannic Majesty during the Civil War.

Vol. III. Papers relating to the commencement of the Civil War; Proclamations and Regulations issued by the Governments of Great Britain and other countries during that war; the Neutrality Laws of the United States and of Great Britain; Judgments delivered by the British Court of Exchequer and by the Supreme Court of the United States; Correspondence between the Government of the United States and the Governments of Spain and Portugal relative to the fitting out of privateers in the ports of the first-named country; and the Report of the Royal Commission appointed to inquire into the character, working, and effect of the British Laws for the enforcement of Neutrality.

Vol. IV. General Correspondence on the "Alabama Claims," presented to Parliament.

PART I.

Statement of the Matter referred to the Arbitrators, as it is understood by the Government of Her Britannic Majesty.

THE Government of Her Britannic Majesty, in proceeding to state, for the information of the Tribunal of Arbitration, the facts and arguments which appear material to a just adjudication on the claims to be presented by the Government of the United States, finds it necessary to remark, in the first place, that no definite and complete statement of those claims, with the grounds on which they are founded, has ever been furnished by the latter Government.

A general definition of them is, however, supplied by the terms of the Reference to Arbitration contained in Articles I to XI of the Treaty of Washington (8th May, 1871), coupled with the previous correspondence between the two Governments.

The parts of the Treaty to which Her Britannic Majesty's Government particularly refers are the following:—

"ARTICLE I.—Whereas differences have arisen between the Government of the United States and the Government of Her Britannic Majesty, and still exist, growing out of the acts committed by the several vessels which have given rise to the claims generically known as the Alabama claims: and whereas Her Britannic Majesty has authorized her High Commissioners and Plenipotentiaries to express in a friendly spirit the regret felt by Her Majesty's Government for the escape, under whatever circumstances, of the Alabama and other vessels from British ports, and for the depredations committed by those vessels: now, in order to remove and adjust all complaints and claims on the part of the United States, and to provide for the speedy settlement of such claims, which are not admitted by Her Britannic Majesty's Government, the High Contracting Parties agree that all the said claims, growing out of acts committed by the aforesaid vessels, and generically known as the Alabama claims, shall be referred to a Tribunal of Arbitration, to be composed of five Arbitrators, to be appointed in the following manner:—

* * * * * *

"ARTICLE II.—The Arbitrators shall meet at Geneva, in Switzerland, at the earliest convenient day after they shall have been named, and shall proceed impartially and carefully to examine and decide all questions that shall be laid before them on the part of the Governments of Her Britannic Majesty and the United States respectively. All questions considered by the Tribunal, including the final award, shall be decided by a majority of all the Arbitrators.

* * * * * *

"ARTICLE VI.—In deciding the matters submitted to the Arbitrators they shall be governed by the following three rules, which are agreed upon by the High Contracting Parties as rules to be taken as applicable to the case, and by such principles of international law not inconsistent therewith as the Arbitrators shall determine to have been applicable to the case:—

"*Rules.*

"A neutral Government is bound—

"First; To use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable grounds to believe is intended to cruize or to carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruize or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

"Secondly; Not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

"Thirdly; To exercise due diligence in its own ports or waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

"Her Britannic Majesty has commanded her High Commissioners and Plenipotentiaries to declare that Her Majesty's Government cannot assent to the foregoing rules as a statement of

Part I.

Introductory statement.

principles of international law which were in force at the time when the claims mentioned in Article I arose, but that Her Majesty's Government, in order to evince its desire of strengthening the friendly relations between the two countries and of making satisfactory provision for the future, agrees that, in deciding the questions between the two countries arising out of those claims, the Arbitrators should assume that Her Majesty's Government has undertaken to act upon the principles set forth in these rules. And the High Contracting Parties agree to observe these rules as between themselves in future, and to bring them to the knowledge of other maritime Powers, and to invite them to accede to them.

"ARTICLE VII.—The decision of the Tribunal shall, if possible, be made within three months from the close of the argument on both sides. It shall be made in writing and dated, and shall be signed by the arbitrators who may assent to it. The said Tribunal shall first determine as to each vessel separately whether Great Britain has, by any act or omission, failed to fulfil any of the duties set forth in the foregoing three rules, or recognized by the principles of international law not inconsistent with such rules, and shall certify such fact as to each of the said vessels. In case the Tribunal find that Great Britain has failed to fulfil any duty or duties as aforesaid, it may, if it think proper, proceed to award a sum in gross to be paid by Great Britain to the United States for all the claims referred to it; and in such case the gross sum so awarded shall be paid in coin by the Government of Great Britain to the Government of the United States at Washington within twelve months after the date of the award.

* * * * * *

"ARTICLE X.—In case the Tribunal finds that Great Britain has failed to fulfil any duty or duties as aforesaid, and does not award a sum in gross, the High Contracting Parties agree that a Board of Assessors shall be appointed to ascertain and determine what claims are valid, and what amount or amounts shall be paid by Great Britain to the United States on account of the liability arising from such failure as to each vessel, according to the extent of such liability as decided by the Arbitrators.

* * * * * *

"ARTICLE XI.—The High Contracting Parties engage to consider the result of the proceedings of the Tribunal of Arbitration and of the Board of Assessors, should such board be appointed, as a full, perfect and final Settlement of all the claims hereinbefore referred to; and further engage that every such claim, whether the same may or may not have been presented to the notice of, made, preferred, or laid before the Tribunal or Board, shall, from and after the conclusion of the proceedings of the Tribunal or Board, be considered and treated as finally settled, barred, and thenceforth inadmissible."

The second of the above "Rules" is understood by Her Majesty's Government as prohibiting the use of the ports or waters of the neutral for the renewal or augmentation of military supplies or arms, only when such supplies or arms are for the service of a vessel cruizing or carrying on war, or intended to cruize or carry on war, against either belligerent; and as not prohibiting any sale of arms or other military supplies in the ordinary course of commerce; and Her Majesty's Government have no reason to believe that it is otherwise understood by the Government of the United States.

The claims, then, which are referred to the Tribunal, are "claims growing out of the acts of" certain vessels, in respect of which the Government of the United States alleges that Great Britain has failed to fulfil some international duty. The duties specifically mentioned, and to which the attention of the Tribunal is directed, are duties to be performed by a "neutral Government," as such. As to each vessel separately, the Tribunal is to determine whether there has or has not been any failure of duty on the part of Her Majesty's Government. If, in the judgment of the Tribunal, there has been such a failure in respect of any specified vessel or vessels, the Tribunal may adopt, at its discretion, either of two courses. It may, on the one hand, award such a gross sum as the Arbitrators may deem just to be paid by Great Britain, in full satisfaction of all well-founded claims on the part of the United States, "growing out of the acts" of the vessel or vessels in respect of which there has been a failure of duty; or, on the other hand, it may content itself with deciding, as to each or any vessel in respect of which there has been a failure of duty, the measure or extent of the liability which on general principles may justly be deemed to have been incurred by such failure. In the event of the second course being chosen, the office of examining and adjudicating on the validity of particular claims "growing out of the acts" of the specified vessel or vessels, and of fixing the sum or sums of money to be paid on account of each, according to the measure of liability laid down by the Tribunal, is remitted to a Board of Assessors, for constituting which provision is made by Article X.

In effect, therefore, the Tribunal is called upon to determine whether, in respect of certain vessels not designated by name, the Government of Great Britain, as a neutral Power, has made default in the performance of any international obligation due from that Power to the United States. Should this question be answered in the affirmative, the Tribunal is then to form a judgment on the extent of the liability, if any, incurred by the default, and is either to award a gross sum in satisfaction of all just claims, or to define the general limits of the liability as to each vessel, for the guidance of the Assessors. The claims which may be presented to the Tribunal, and to which alone it is to have regard in

making its award, are claims "growing out of the acts" of the vessels (if any) in respect of which a failure of duty shall be proved.

The vessels to which this inquiry relates are (as has been already remarked), not designated in the Treaty by name; they are only indicated by reference to a particular class of claims, to which their "acts" are said to have given rise. These claims are assumed in the Treaty to have become familiar to both Governments, in the course of the correspondence which has passed between them, under the general title of the "Alabama Claims." They are assumed to form a distinct class, well known, and easily separable from the mass of miscellaneous claims arising from other sources, for which latter a different mode of settlement is provided by Articles XII to XVII of the Treaty. The Alabama was a vessel which sailed from the port of Liverpool, under circumstances which will be stated below, and was afterwards employed as a cruizer in the naval service of the Confederate States. The phrase "The Alabama Claims" is understood by Her Britannic Majesty's Government to embrace all claims "growing" (to use the language of the Treaty), "out of acts committed by" this vessel, and by other vessels which are alleged to have been procured, like the Alabama, from British ports during the war, and under circumstances more or less similar, and to be confined to such claims. The only vessels in respect of the acts of which claims have been made by the Government of the United States on that of Her Britannic Majesty, either during the Civil War, or in the six years which have elapsed since its termination, are the Alabama herself, and the vessels formerly known as the Florida, Georgia, and Shenandoah. On one occasion, indeed, since the close of the war, namely, in a despatch dated 27th August, 1866, and communicated by the Minister of the United States to Her Majesty's Government, mention was made of a vessel called the Sumter, as one of those in respect of which the Government of the United States conceived itself to have claims against Great Britain. But no claims in respect of the Sumter were in fact included in the detailed list which was inclosed in that despatch and then presented to Her Britannic Majesty's Government, nor have any such claims been presented before or since. Nor is Her Britannic Majesty's Government aware of any grounds on which such claims could be made with any show of reason. Her Britannic Majesty's Government is therefore entitled to assume that the claims referred to the Tribunal are claims "growing out of the acts" of the four vessels above-named, or of some or one of them.

The circumstances under which these four vessels respectively sailed from British ports, and came into the possession of the Government of the Confederate States, and the considerations which the Tribunal will be called upon to apply to them respectively, are, as will hereafter be seen, dissimilar in very material respects. Her Britannic Majesty's Government, however, maintains that in respect of none of them was there, on its part, any failure in the discharge of international obligations rendering Great Britain justly liable to make reparation to the United States for acts committed by them, or by the persons in whose possession they respectively were, out of the jurisdiction of the British Crown.

For the guidance of the Tribunal in adjudicating on the questions submitted to it, three "rules" have been laid down, which, by agreement between the two Governments, are to be taken as applicable to the case, and to be reciprocally observed in future by Great Britain and the United States. These rules purport to lay down certain specific obligations incumbent in time of war on neutral Powers. By them, and by such principles of international law not inconsistent with them as the Tribunal shall determine to have been applicable to the case, the Tribunal is to be governed. Her Britannic Majesty's Government has declined to give its assent to these rules as a statement of principles of international law which were actually in force at the time when the claims now submitted to arbitration arose. But by Her Britannic Majesty's Government, as well as that of the United States, they are believed and intended to be not at variance but in substantial accord with the general principles of that system by which both Powers alike hold themselves bound, which they alike desire to preserve sacred and inviolate, and from the dominion of which neither of them proposes to withdraw the questions that have unhappily arisen between them. Accepting the rules sincerely and without reserve, in the manner expressed in the VIth Article of the Treaty, Her Britannic Majesty's Government will assume (as is, indeed, clearly implied in the terms of that Article) that they are to be construed with reference to, and in connection with, that long-established body of international rules and usages which was and still is common to Great Britain and the United States with other civilized peoples.

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PART II.

Statement of Events which attended and followed the Commencement of the Civil War, and of the Course pursued in relation to it by Great Britain and other Maritime Powers.

Before approaching the cases of the vessels to which the claims in question are understood to relate, it is necessary to state concisely the previous course of events, and to place clearly before the Tribunal the course of conduct which had been pursued during the earlier period of the war by Her Britannic Majesty's Government.

General Propositions.

The following propositions are believed by Her Majesty's Government to be in accordance with the principles of international law and the practice of nations:—

1. It is the duty of a neutral Government, in all matters relating to the war, to act impartially towards the belligerent Powers; to concede to one what it concedes to the other; to refuse to one what it refuses to the other.

2. This duty, inasmuch as it flows directly from the conception of neutrality, attends the relation of neutrality wherever it exists, and is not affected by considerations arising from the political relation which before the war the belligerents may have sustained to one another.

3. Maritime war being carried on by hostilities on the high seas, and through the instrumentality (ordinarily) of vessels commissioned by public authority, a neutral Power is bound to recognize, in matters relating to the war, commissions issued by each belligerent, and captures made by each, to the same extent and under the same conditions as it recognizes commissions issued and captures made by the other.

4. Where either belligerent is a community or body of persons not recognized by the neutral Power as constituting a sovereign State, commissions issued by such belligerent are recognized as acts emanating, not indeed from a sovereign Government, but from a person or persons exercising *de facto*, in relation to the war, the powers of a sovereign Government.

The Civil War.

In the year 1861 a civil war broke out in the United States. Seven States—South Carolina, Florida, Mississippi, Alabama, Georgia, Louisiana, and Texas—had one by one formally renounced their allegiance to the Union, and declared themselves independent. They had formed themselves into a separate Confederation, under the title of the "Confederate States of North America;" had adopted a Federal Constitution, instituted a Federal Legislature, Executive, and Judiciary; taken measures to raise an army of 100,000 men, and appropriated sums of money amounting to 2,029,485 dollars (equal to more than 10,000,000 francs) towards the creation of a navy. This series of events commenced in November 1860, and was completed before the end of March 1861, at which time the Confederate Legislature had been for more than a month in session. In April 1861 hostilities commenced between the Government of the Union and the Confederated States of the South; and shortly afterwards four other States—Virginia, North Carolina, Tennessee, and Arkansas—likewise separated themselves from the Union and joined the Confederacy, which thus embraced a vast and compact territory, extending from the River Potomac to the confines of the Republic of Mexico.

The war began with the attack and bombardment by the Confederates of Fort Sumter, a fort situate at the mouth of Charleston Harbour, and held by a small garrison of United States' troops. On the reduction of this place, which was speedily effected, followed within a few days the seizure, by Virginian militia, of Harper's Ferry, an important military arsenal at the confluence of the Rivers Shenandoah and Potomac, and of the great naval arsenal and shipbuilding yards of Norfolk, where the James River discharges itself into Chesapeake Bay. Fort Sumter surrendered on the 13th April. On the 15th the

President of the United States issued a Proclamation calling out militia to the number of 75,000 men.* On the 17th, Mr. Jefferson Davis (who had been elected in February to the office of President of the Confederate States) published a counter-Proclamation, inviting applications for letters of marque and reprisal to be granted under the seal of the Confederate States against ships and property of the United States and their citizens.† By a further Proclamation, dated the 19th April, President Lincoln, after referring to the proposed issue of letters of marque, declared that he had deemed it advisable to set on foot a blockade of the ports within the seven States then in revolt, "in pursuance of the laws of the United States and of the law of nations in such case provided."‡

"For this purpose a competent force will be posted so as to prevent entrance and exit of vessels from the ports aforesaid. If, therefore, with a view to violate such blockade, a vessel shall approach, or shall attempt to leave, any of the said ports, she will be duly warned by the Commander of one of the said blockading vessels, who will endorse on her register the fact and date of such warning; and if the same vessel shall again attempt to enter or leave the blockaded port, she will be captured and sent to the nearest convenient port for such proceedings against her and her cargo as prize as may be deemed advisable."

By another Proclamation, dated the 27th April,§ the blockade was declared to be extended to the ports of Northern Virginia.

On the publication of these Proclamations, Lord Lyons, then Her Britannic Majesty's Envoy at Washington, requested of the Government of the United States that he might be furnished, for the guidance of British merchants, with definite information as to the manner in which the blockade was to be enforced. He was assured, in reply, by Mr. Seward, then United States' Secretary of State, that it would be conducted as strictly according to the recognized rules of public law, and with as much liberality towards neutrals, as any blockade ever was by a belligerent.‖

To the Minister of the Queen of Spain Mr. Seward wrote as follows:—‖

"Sir,

"In acknowledging the receipt of your note of the 30th ultimo, on the subject of the blockade of the ports in several of the States, I deem it proper to state for your further information:—

"1. That the blockade will be strictly enforced upon the principles recognized by the law of nations.

"2. That armed vessels of neutral States will have the right to enter and depart from the interdicted ports.

"3. That merchant-vessels in port at the time the blockade took effect will be allowed a reasonable time for departure.

"I avail, &c.
(Signed) "W. H. SEWARD."

The blockade declared by the foregoing Proclamations was actually instituted, as to the ports within the State of Virginia, on the 30th April;¶ and was extended to the principal ports on the seaboard of the other Confederated States before the end of May. A considerable number of neutral ships and cargoes were captured for breaches or alleged breaches of blockade, some at or near the mouths of blockaded ports, others on the high seas. Vessels or cargoes so captured were carried before, and condemned by, Courts of the United States exercising jurisdiction in matters of prize; and the validity of the sentences thus pronounced was upheld by the Supreme Court of the United States, which is the highest Court of Appeal in such matters. Mr. Justice Grier, in delivering the judgment of the Court on this question said:—

"To legitimate the capture of a neutral vessel or property on the high seas, a war must exist *de facto*, and the neutral must have a knowledge or notice of the intention of one of the parties belligerent to use this mode of coercion against a port, city, or territory in possession of the other."

In a subsequent part of the same judgment he added:—

"Whether the President, in fulfilling his duties as Commander-in-chief in suppressing an insurrection, has met with such armed hostile resistance, and a civil war of such alarming proportions as will compel him to accord to them the character of belligerents, is a question to be decided by him; and this Court must be governed by the decisions and acts of the Political Department of the Government, to which this power was entrusted. He must determine what degree of force the crisis demands. The Proclamation of the blockade is itself official and conclusive evidence to the Court that a state of war existed which demanded and authorized a recourse to such a measure under the circumstances peculiar to the case. The correspondence of Lord Lyons with the Secretary of State admits the fact, and concludes the question."

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* Appendix, vol. iii, p. 2. † Ibid., p. 4. ‡ Ibid., p. 6. § Ibid., p. 9.
‖ Ibid., pp. 10, 11. ¶ Ibid., p 10.

Part II.

Introductory statement.

On the 3rd May, 1861, President Lincoln directed that the naval force of the United States should be increased by the enlistment of 18,000 additional seamen, and their land forces by fifty additional regiments, partly of regular troops and partly of volunteers, with an aggregate maximum of 64,748 men.

It is needless to refer particularly to the subsequent history of the war waged on the American Continent. It is well known that the forces of the United States, attempting to penetrate into Virginia, encountered a severe defeat; that great armies were raised on both sides; that hostilities were carried on over an immense area, with varying fortune, for nearly four years; and that the contest terminated, in 1865, in the complete reconquest of the eleven Confederated States, which, after being held for a considerable time under military control, were finally readmitted to their original position in the Union.

The events stated above are matters of general notoriety, recorded in the history of the period.

On the 30th April, 1861, Mr. Jefferson Davis, as President of the Confederated States, addressed to the Congress of those States a Message, which contained the following passage:—

"The operations of the Navy Department have been necessarily restricted by the fact that sufficient time has not yet elapsed for the purchase or construction of more than a limited number of vessels adapted for the public service. Two vessels have been prepared and manned, the Sumter and McRae, and are now being prepared for sea at New Orleans with all possible dispatch."

On the 1st May, 1861, Mr. Seward, Secretary of State of the United States, addressed to the British Minister at Washington a despatch of that date, which contained the following passage:—*

"The so-called Confederate States have waged an insurrectionary war against this Government. They are buying, and even seizing, vessels in several places for the purpose of furnishing themselves with a naval force, and they are issuing letters of marque to privateers to be employed in preying on the commerce of this country. You are aware that the President has proclaimed a blockade of the ports included within the insurgent States. All these circumstances are known to the world."

On the 6th May, 1861, the Congress of the Confederate States passed an Act intituled, "An Act recognizing the Existence of War between the United States and the Confederate States, and concerning Letters of Marque, Prizes and Prize Goods."† The first section of this Act was as follows:—

"The Congress of the Confederate States of America do enact, that the President of the Confederate States is hereby authorized to use the whole land and naval force of the Confederate States to meet the war thus commenced, and to issue to private vessels commissions or letters of marque and general reprisal, in such form as he shall think proper, under the seal of the Confederate States, against the vessels, goods, and effects of the United States, and of the citizens or inhabitants of the States and territories thereof; provided, however, that property of the enemy (unless it be contraband of war) laden on board a neutral vessel shall not be subject to seizure under this Act; and provided further, that vessels of the citizens or inhabitants of the United States now in the ports of the Confederate States, except such as have been since the 5th April last, or may hereafter be, in the service of the Government of the United States, shall be allowed thirty days after the publication of this Act to leave said ports and reach their destination; and such vessels and their cargoes, excepting articles contraband of war, shall not be subject to capture under this Act during said period, unless they shall have previously reached the destination for which they were bound on leaving said ports."

The Act then proceeded to lay down in detail regulations as to the conditions on which letters of marque should be granted to private vessels, and the conduct and behaviour of the officers and crews of such vessels, and the disposal of prizes made by them, similar to the regulations which have been ordinarily prescribed and enforced with respect to privateers in the United States and by the maritime powers of Europe.

The 4th and 7th sections were as follows:—

"4. That, before any commission or letters of marque and reprisal shall be issued as aforesaid, the owner or owners of the ship or vessel for which the same shall be requested, and the commander thereof for the time being, shall give bond to the Confederate States, with at least two responsible sureties not interested in such vessel, in the penal sum of 5,000 dollars, or, if such vessel be provided with more than 150 men, then in the penal sum of 10,000 dollars, with condition that the owners, officers, and crew who shall be employed on board such commissioned vessel shall and will observe the laws of the Confederate States, and the instructions which shall be given them according to law for the regulation of their conduct, and will satisfy all damages and injuries which shall be done or committed contrary to the tenor thereof by such vessel during her commission, and to deliver up the same when revoked by the President of the Confederate States."

"7. That before breaking bulk of any vessel which shall be captured as aforesaid, or other disposal or conversion thereof, or of any articles which shall be found on board the same, such captured vessel,

* Appendix, vol. iii, p. 12.

† Ibid., p. 13.

goods, or effects, shall be brought into some port of the Confederate States, or of a nation or State in amity with the Confederate States, and shall be proceeded against before a competent tribunal; and after condemnation and forfeiture thereof shall belong to the owners, officers, and crew of the vessel capturing the same, and be distributed as before provided; and in the case of all captured vessels, goods, and effects which shall be brought within the jurisdiction of the Confederate States, the district courts of the Confederate States shall have exclusive original cognizance thereof, as the civil causes of Admiralty and maritime jurisdiction; and the said courts, or the courts being courts of the Confederate States into which such cases shall be removed, in which they shall be finally decided, shall and may decree restitution in whole or in part, when the capture shall have been made without just cause. And, if made without probable cause, may order and decree damages and costs to the party injured, for which the owners and commanders of the vessels making such captures, and also the vessels, shall be liable."

A further Act, intituled "An Act regulating the Sale of Prizes and the Distribution thereof," was likewise passed by the Congress of the Confederate States on the 14th of May, 1861.*

Many persons who had served as officers in the Navy of the United States offered themselves for employment in the naval service of the Confederate States, and those for whom employment could be found were received and employed in such service.

In and soon after the month of May, 1861, a number of armed ships, mostly of small tonnage, were fitted out in and sent to sea from ports in the Confederate States, and a considerable number of captures were made by them. Some of these were commissioned as public ships of war of the Confederate States, and commanded by officers in the naval service of the Confederacy; others as private ships of war or privateers. Among the armed vessels which were so fitted out and made prizes were the Calhoun, a steamer of upwards of 1,000 tons, sent to sea in May, 1861; the Jeff. Davis, Savannah, St. Nicholas, Winslow, and York. More than twenty prizes were made by these vessels. The Sumter (to which reference will be made hereafter) went to sea in June 1861; the Sallie and Nashville in October, 1861; the Echo in 1862; the Retribution and Boston in 1863; the Chickamauga, Olustee, and Tallahassee, in 1864. These vessels are stated to have taken from sixty to seventy prizes.

It appears from an official Report of the Secretary of the Navy of the United States that the number of vessels captured and destroyed by vessels of the United States during the war, for breach of blockade or in battle, exceeded 1,200.

Neutrality of the Maritime Powers.

The maritime Powers, on receiving information of the outbreak of the war, resolved to maintain a strict and impartial neutrality in their relations with the belligerents, holding that it did not belong to them, as Governments, to decide on the questions which had unhappily divided the American people, nor to take any part in the contest on which the future of the American Commonwealth appeared to depend.

Of all the nations of the world, Great Britain, by reason of her geographical position, the activity of her manufacturing and trading industries, her vast commerce with America, the extent and number of her Transatlantic possessions, the magnitude of her military and commercial marine, and its dispersion not only over the seas bordering on the American coast but over every part of the world, was the Power most immediately and profoundly affected by a civil war in the United States. The European Power which, after Great Britain, possessed the largest marine was France.

On the 14th May, 1861, Her Britannic Majesty's Government issued the following Proclamation, intended for the information of the officers of the Government and of British subjects in general:—†

"Victoria R.

"Whereas We are happily at peace with all Sovereigns, Powers, and States;

"And whereas hostilities have unhappily commenced between the Government of the United States of America and certain States styling themselves the Confederate States of America;

"And whereas We, being at peace with the Government of the United States, have declared Our Royal determination to maintain a strict and impartial neutrality in the contest between the said Contending Parties;

"We therefore have thought fit, by and with the advice of our Privy Council, to issue this Our Royal Proclamation.

"And We do hereby strictly charge and command all Our loving subjects to observe a strict neutrality in and during the aforesaid hostilities, and to abstain from violating or contravening either the laws and statutes of the realm in this behalf, or the law of nations in relation thereto, as they will answer to the contrary at their peril.

"And whereas in and by a certain Statute made and passed in the 59th year of His Majesty King George III, intituled 'An Act to prevent enlisting or engagement of His Majesty's subjects

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* Appendix, vol. iii, p. 15.

† Ibid., p. 17.

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to serve in a foreign service, and the fitting out or equipping, in His Majesty's dominions, vessels for warlike purposes, without His Majesty's licence, it is amongst other things declared and enacted as follows:—

"'That if any natural-born subject of His Majesty, his heirs and successors, without the leave or licence of His Majesty, his heirs or successors, for that purpose first had and obtained, under the Sign Manual of His Majesty, his heirs or successors, or signified by Order in Council, or by Proclamation of His Majesty, his heirs or successors, shall take or accept, or shall agree to take or accept, any military commission, or shall otherwise enter into the military service as a commissioned or non-commissioned officer, or shall enlist or enter himself to enlist, or shall agree to enlist or to enter himself to serve as a soldier, or to be employed or shall serve in any warlike or military operation in the service of or for or under or in aid of any foreign Prince, State, Potentate, Colony, Province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of Government in or over any foreign country, Colony, Province, or part of any province or people, either as an officer or soldier, or in any other military capacity; or if any natural-born subject of His Majesty shall, without such leave or licence as aforesaid, accept, or agree to take or accept, any commission, warrant, or appointment as an officer, or shall enlist or enter himself, or shall agree to enlist or enter himself, to serve as a sailor or marine, or to be employed, or engaged, or shall serve in and on board any ship or vessel of war, or in and on board any ship or vessel used or fitted out, or equipped or intended to be used, for any warlike purpose, in the service of or for or under or in aid of any foreign Power, Prince, State, Potentate, Colony, Province, or part of any province or people, or of any person or persons, exercising or assuming to exercise the powers of Government in or over any foreign country, Colony, Province, or part of any province or people; or if any natural-born subject of His Majesty shall, without such leave and licence as aforesaid, engage, contract, or agree to go, or shall go, to any foreign State, Country, Colony, Province, or part of any province, or to any place beyond the seas, with an intent or in order to enlist or enter himself to serve, or with intent to serve in any warlike or military operation whatever, whether by land or by sea, in the service of or for or under or in aid of any foreign Prince, State, Potentate, Colony, Province, or part of any province or people, or in the service of or for or under or in aid of any person or persons exercising or assuming to exercise the powers of Government in or over any foreign Country, Colony, Province, or part of any province or people, either as an officer or a soldier, or in any other military capacity, or as an officer or sailor or marine in any such ship or vessel as aforesaid, although no enlisting money or pay or reward shall have been or shall be in any or either of the cases aforesaid actually paid to or received by him, or by any person to or for his use or benefit; or if any person whatever, within the United Kingdom of Great Britain and Ireland, or in any part of His Majesty's dominions elsewhere, or in any Country, Colony, Settlement, Island, or place belonging to or subject to His Majesty, shall hire, retain, engage, or procure, or shall attempt or endeavour to hire, retain, engage, or procure, any person or persons whatever to enlist, or to enter or engage to enlist, or to serve or to be employed in any such service or employments as aforesaid, as an officer, soldier, sailor, or marine, either in land or sea service, for or under or in aid of any foreign Prince, State, Potentate, Colony, Province, or part of any province or people, or for or under or in aid of any person or persons exercising or assuming to exercise any powers of Government as aforesaid, or to go, or to agree to go, or embark from any part of His Majesty's dominions, for the purpose or with intent to be so enlisted, entered, engaged, or employed as aforesaid, whether any enlisting money, pay, or reward shall have been or shall be actually given or received, or not; in any or either of such cases, every person so offending shall be deemed guilty of a misdemeanor, and upon being convicted thereof, upon any information or indictment, shall be punishable by fine and imprisonment, or either of them, at the discretion of the court before which such offender shall be convicted.'

"And it is in and by the said Act further enacted,—

"'That if any person, within any part of the United Kingdom, or in any part of His Majesty's dominions beyond the seas, shall, without the leave and licence of His Majesty for that purpose first had and obtained as aforesaid, equip, furnish, fit out, or arm, or attempt or endeavour to equip, furnish, fit out, or arm, or procure to be equipped, furnished, fitted out, or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming, of any ship or vessel, with intent or in order that such ship or vessel shall be employed in the service of any foreign Prince, State, or Potentate, or of any foreign Colony, Province, or part of any province or people, or of any person or persons exercising or assuming to exercise any powers of Government in or over any foreign State, Colony, Province, or part of any province or people, as a transport or store-ship, or with intent to cruize or commit hostilities against any Prince, State, or Potentate, or against the subjects or citizens of any Prince, State, or Potentate, or against the persons exercising or assuming to exercise the powers of Government in any Colony, Province, or part of any province or country, or against the inhabitants of any foreign Colony, Province, or part of any province or country, with whom His Majesty shall not then be at war; or shall, within the United Kingdom, or any of His Majesty's dominions, or in any Settlement, Colony, Territory, Island, or place belonging or subject to His Majesty, issue or deliver any commission for any ship or vessel, to the intent that such ship or vessel shall be employed as aforesaid, every such person so offending shall be deemed guilty of a misdemeanor, and shall upon conviction thereof upon any information or indictment, be punishable by fine and imprisonment, or either of them, at the discretion of the court in which such offender shall be convicted; and every such ship or vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores, which may belong to or be on boasd of any such ship or vessel, shall be forfeited; and it shall be lawful for any officer of His Majesty's Customs or Excise or any officer of His Majesty's Navy, who is by law empowered to make seizures for any forfeiture incurred under any of the laws of Customs or Excise, or the laws of trade and navigation, to seize such ships and vessels aforesaid, and in such places and in such manner in which the officers of His Majesty's Customs or Excise and the officers of His Majesty's Navy are empowered respectively to make seizures under the laws of Customs

and Excise, or under the laws of trade and navigation; and that every such ship and vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores which may belong to or be on board of such ship or vessel, may be prosecuted and condemned in the like manner and in such courts as ships or vessels may be prosecuted and condemned for any breach of the laws made for the protection of the Revenues of Customs and Excise, or of the laws of trade and navigation.'

"And it is in and by the said Act further enacted,—

"'That if any person in any part of the United Kingdom of Great Britain and Ireland, or in any part of His Majesty's dominions beyond the seas, without the leave and licence of His Majesty for that purpose first had and obtained as aforesaid, shall, by adding to the number of the guns of such vessel, or by changing those on board for other guns, or by the addition of any equipment for war, increase or augment, or procure to be increased or augmented, or shall be knowingly concerned in increasing or augmenting, the warlike force of any ship or vessel of war, or cruizer, or other armed vessel, which at the time of her arrival in any part of the United Kingdom, or any of His Majesty's dominions, was a ship of war, cruizer, or armed vessel in the service of any foreign Prince, State, or Potentate, or of any person or persons exercising or assuming to exercise any powers of Government in or over any Colony, Province, or part of any province or people belonging to the subjects of any such Prince, State, or Potentate, or to the inhabitants of any Colony, Province, or part of any province or country under the control of any person or persons so exercising or assuming to exercise the powers of Government, every such person so offending shall be deemed guilty of a misdemeanor, and shall, upon being convicted thereof upon any information or indictment, be punishable by fine and imprisonment, or either of them, at the discretion of the court before which such offender shall be convicted.'

"Now, in order that none of Our subjects may unwarily render themselves liable to the penalties imposed by the said Statute, We do hereby strictly command, that no person or persons whatsoever do commit any act, matter, or thing whatsoever contrary to the provisions of the said Statute, upon pain of the several penalties by the said Statute imposed, and of Our high displeasure.

"And We do hereby further warn all our loving subjects, and persons whatsoever entitled to Our protection, that if any of them shall presume, in contempt of this our Royal Proclamation, and of Our high displeasure, to do any acts in derogation of their duty as subjects of a neutral Sovereign in the said contest, or in violation or contravention of the law of nations in that behalf; as for example, and more especially, by entering into the military service of either of the said Contending Parties as commissioned or non-commissioned officers or soldiers; or by serving as officers, sailors, or marines on board any ship or vessel of war or transport of, or in the service of, either of the said Contending Parties; or by serving as officers, sailors, or marines on board any privateer bearing letters of marque of or from either of the said Contending Parties; or by engaging to go or going to any place beyond the seas with intent to enlist or engage in any such service, or by procuring or attempting to procure, within Her Majesty's dominions at home or abroad, others to do so; or by fitting out, arming, or equipping any ship or vessel to be employed as a ship of war or privateer or transport by either of the said Contending Parties; or by breaking or endeavouring to break any blockade lawfully and actually established by or on behalf of either of the said Contending Parties; or by carrying officers, soldiers, despatches, arms, military stores, or materials, or any article or articles considered and deemed to be contraband of war, according to the law of modern usage of nations, for the use or service of either of the said Contending Parties, all persons so offending will incur and be liable to the several penalties and penal consequences by the said Statute or by the law of nations in that behalf imposed or denounced.

"And We do hereby declare, that all our subjects, and persons entitled to Our protection, who may misconduct themselves in the premises, will do so at their peril and of their own wrong, and that they will in nowise obtain any protection from Us against any liabilities or penal consequences, but will, on the contrary, incur Our high displeasure by such misconduct.

"Given at Our Court at the White Lodge, Richmond Park, this 13th day of May, in the year of Our Lord 1861, and in the 24th of Our reign."

This Proclamation was published fourteen days after the receipt in London of the news that Fort Sumter had been reduced by bombardment, that the President of the United States had called out 75,000 men, and that Mr. Jefferson Davis had taken measures for issuing letters of marque;* twelve days after receipt of intelligence that President Lincoln had published a Proclamation of blockade;† nine days after a copy of that Proclamation had been received from Her Britannic Majesty's Consul at New York;‡ and three days after the same Proclamation had been officially communicated to Her Majesty's Secretary of State for Foreign Affairs by the United States' Minister, Mr. Dallas.§

On the 1st June, 1861, Her Britannic Majesty's Government issued orders by which the armed ships of both belligerents, whether public ships of war or privateers, were interdicted from carrying prizes made by them into the ports, harbours, roadsteads, or waters of the United Kingdom, or of any of Her Majesty's Colonies or Possessions abroad.‖

The Government of the Confederate States remonstrated warmly against these orders, as practically unequal in their operation, and unduly disadvantageous to the belligerent whose ports were blockaded. The Secretary of State of the United States expressed his satisfaction with them, as likely to "prove a death-blow to Southern privateering."

* Appendix, vol. iii, pp. 2 and 3.
† "Times" and "Daily News" of May 2, 1861.
‡ Appendix, vol. iii, p. 4.
§ Ibid., p. 7.
‖ Ibid., p. 18.

These orders were strictly enforced throughout the whole period of the war, and no armed vessel was suffered to bring prizes into any British port.

On the 10th June, 1861, the Government of the Emperor of the French issued a Declaration which was as follows :—*

"*Paris, le* 10 *Juin*, 1861.

"Le Ministre des Affairs Etrangères a soumis à l'Empereur la déclaration suivante, que Sa Majesté a revêtue de son approbation :—

"'*Déclaration.*

"'Sa Majesté l'Empereur des Français, prenant en considération l'état de paix qui existe entre la France et les Etats Unis d'Amérique, a résolu de maintenir une stricte neutralité dans la lutte engagée entre le Gouvernement de l'Union et les Etats qui prétendent former une Confédération particulière.

"'En conséquence, Sa Majesté, vu l'Article 14 de l'Ordonnance de la Marine du mois d'Août, 1861, l'Article 3 de la Loi du 10 Avril, 1825, les Articles 84 et 85 du Code Pénal, 65 et suivants du Décret du 24 Mars, 1852, 313 et suivants du Code Pénal Maritime, et l'Article 21 du Code Napoléon ;

"'Déclare :

"'1. Il ne sera permis à aucun navire de guerre ou corsaire de l'un ou l'autre des belligérants d'entrer et de séjourner avec des prises dans nos ports ou rades pendant plus de vingt-quatre heures, hors le cas de relâche forcée.

"'2. Aucune vente d'objets provenant de prises ne pourra avoir lieu dans nos dits ports ou rades.

"'3. Il est interdit à tout Français de prendre commission de l'une des deux parties pour armer des vaisseaux en guerre, ou d'accepter des lettres de marque pour faire la course maritime, ou de concourir d'une manière quelconque à l'équipement ou l'armement d'un navire de guerre ou corsaire de l'une des deux parties.

"'4. Il est également interdit à tout Français, résidant en France ou à l'étranger, de s'enrôler ou prendre du service, soit dans l'armée de terre, soit à bord des bâtiments de guerre ou des corsaires de l'une ou de l'autre des belligérants.

"'5. Les Français résidant en France ou à l'étranger devront également s'abstenir de tout fait qui, commis en violation des lois de l'empire ou du droit des gens, pourrait être considéré comme un acte hostile à l'une des deux parties, et contraire à la neutralité que nous avons résolu d'observer.

"'Les contrevenants aux défenses et recommandations contenues dans la présente Déclaration seront poursuivis, s'il y a lieu, conformément aux dispositions de la Loi du 10 Avril, 1825, et aux Articles 84 et 85 du Code Pénal, sans préjudice de l'application qu'il pourrait y avoir lieu de faire aux dits contrevenants des dispositions de l'Article 21 du Code Napoléon, et des Article 65 et suivants du Décret du 24 Mars, 1825, sur la marine marchande, 313 et suivants du Code Pénal pour l'armée de mer.

"'Sa Majesté déclare, en outre, que tout Français qui ne se sera pas conformé aux présentes prescriptions ne pourra prétendre à aucune protection de son Gouvernement contre les actes ou mesures, quels qu'ils soient, que les belligérants pourraient exercer ou décréter.

"'NAPOLEON.'"

"Le Ministre des Affaires Etrangères,

"'E. THOUVENEL.'"

A Decree, of which a translation is subjoined, was on the 17th June, 1861, issued by the Government of the Queen of Spain :—†

(Translation.) "*Palace, June* 17, 1861.

"Taking into consideration the relations which exist between Spain and the United States of America, and the desirability that the reciprocal sentiments of good understanding should not be changed by reason of the grave events which have taken place in that Republic, I have resolved to maintain the most strict neutrality in the contest begun between the Federal States of the Union and the States federated at the South ; and in order to avoid the damage which might accrue to my subjects and to navigation and commerce, from the want of clear provisions to which to adjust their conduct, I do decree the following :—

"Article 1. It is forbidden in all the ports of the Monarchy to arm, provide, or equip any privateer vessel, whatever may be the flag she displays.

"Art. 2. It is forbidden in like manner to the owners, masters, or captains of merchant-vessels to accept letters of marque, or contribute in any way whatsoever to the armament or equipment of vessels of war or privateers.

"Art. 3. It is forbidden to vessels of war or privateers with their prizes, to enter or to remain for more than 24 hours in the ports of the Monarchy, except in case of stress of weather. Whenever this last shall occur, the authorities will keep watch over the vessel, and oblige her to go out to sea as soon as possible without permitting her to take in any stores except those strictly necessary for the moment, but in no case arms nor supplies for war.

"Art. 4. Articles proceeding from prizes shall not be sold in the ports of the Monarchy.

"Art. 5. The transportation under the Spanish flag of all articles of commerce is guaranteed, except when they are directed to blockaded ports. The transportation of effects of war is forbidden, as well as the carrying of papers or communications for belligerents. Transgressors shall be responsible for their acts, and shall have no right to the protection of my Government.

"Art. 6. It is forbidden to all Spaniards to enlist in the belligerent armies, or take service on board of vessels of war or privateers.

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* Appendix, vol. iii, p. 22.

† Ibid., p. 23.

"Art. 7. My subjects will abstain from every act which, in violation of the laws of the kingdom, can be considered as contrary to neutrality.

"Art. 8. Those who violate the foregoing provisions shall have no right to the protection of my Government, shall suffer the consequences of the measures which the belligerents may dictate, and shall be punished according to the laws of Spain.

"SIGNED WITH THE ROYAL HAND.

"The Minister of State,
"Saturnino Calderon Collantes."

The following public notifications were, previously to the 16th June, 1861, issued by the Government of the King of the Netherlands:—*

(Translation.) "*The Hague.*

"In obedience to the King's orders, the Ministers for Foreign Affairs, of Justice, and of the Marine, present to the knowledge of all whom it may concern, that to guard against probable difficulties during the doubtful complications in the United States of North America, no privateers under any flag, or provided with any commission or letters of marque, or their prizes, shall be admitted into our havens or seaports, unless in case of distress, and that requisite orders be issued that under any circumstances such privateers and their prizes be required to go again to sea as speedily as possible.

"The Ministers above named."

(Translation.) "*The Hague.*

"The Minister for Foreign Affairs and the Minister of Justice, by the King's authority, warn, by these presents, all inhabitants of the Kingdom, that during the existing disturbances in the United States of America they in nowise take part in privateering, because the Netherlands Government has acceded to the Declaration upon maritime rights set forth by the Paris Conference of 1856, whereby, among other matters, privateering is abolished, and no recognition of commissions obtained for letters of marque is permitted. Also that commissions and letters of marque, in conflict with the aforesaid prohibition, which may be issued to inhabitants of the Netherlands cannot have legal effect in behalf of the King's subjects, or of any abroad who are in subjection to the laws of the Kingdom. Those who, under such circumstances, engage in privateering or lend their aid in it to others, will be considered as pirates, and prosecuted according to law in the Netherlands, and subjected to the punishment provided for the commission of such offences.

"The Ministers above named."

(Translation.) "*The Hague, June* 1861.

"The Minister for Foreign Affairs, apprised by a communication from the Minister of Marine that the King had authorized the naval force in the West Indies to be seasonably strengthened by His Majesty's steam-frigate Zealand and the screw-propellers Dyambi and Vesuvius, for the purpose of giving protection to the trade and navigation of the Netherlands during the contest which seems to be in existence in the United States of North America, wherever it may be desired, accordingly esteems it to be his duty to direct the attention of shipmasters, consignees, and freighters to the peril to which their insurance against loss will be exposed by any violation of the obligations imposed on neutral Powers to respect actual blockades, and not to carry contraband of war, or despatches of belligerents.

"In these cases they will be subject to all the resulting losses that may follow, without the benefit of any protection or intervention on the part of His Majesty's Government. Of which take notice.

"The Minister above named."

The Government of the Emperor of Brazil issued the following Circular, addressed to the Presidents of Provinces within the Brazilian Empire:—†

Circular to the Presidents of Provinces.

(Translation.) "*Rio de Janeiro, Ministry of Foreign Affairs,*
"Illustrious and Excellent Sir, "*August* 1, 1861.

"The strife that has broken out between the Federal Government of the United States of North America, and some of those States which have declared themselves constituted as a separate Confederation, may produce questions for our country, for the solution of which it is important that your Excellency should be prepared; and I have, therefore, received orders from His Majesty the Emperor to declare to your Excellency that the Imperial Government considers that it ought to maintain itself in the most strict neutrality during the war in which those States are unhappily engaged: and in order that that neutrality may be preserved, it is fitting that the following determinations be observed:—

"The Confederate States have no recognized existence; but, having constituted a distinct Government *de facto*, the Imperial Government cannot consider their naval armaments as acts of piracy, nor refuse them, with the necessary restrictions, the character of belligerents which they have assumed.

"In conformity with this, Brazilian subjects are to abstain from all participation and aid in favour of one of the belligerents, and they must not take part in any acts which can be considered as hostile to one of the two parties, and contrary to the obligations of the neutrality.

"The exportation of warlike articles from the ports of the Empire for the new Confederate States is absolutely prohibited, whether it is intended to be done under the Brazilian flag or that of another nation.

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* Appendix, vol. iii, p. 27. † Ibid., p. 24.

Part II.

Introductory Statement.

"The same trade in contraband of war must be forbidden to Brazilian ships, although they may be destined for the ports subject to the Government of the North American Union.

"No ship with the flag of one of the belligerents, and which may be employed in this war, or intended for it, can be provisioned, equipped, or armed in the ports of the Empire; the furnishing of victuals and naval provisions indispensable for the continuation of the voyage not being included in this prohibition.

"No ship of war or cruizer shall be allowed to enter and remain with prizes in our ports or bays more than twenty-four hours, except in case of forced arrival, and they shall in no way be allowed to dispose of the said prizes, or of objects coming from them.

"In the execution of these measures, and in the solution of the questions which may arise, your Excellency will be guided by the principles of international law, keeping in mind the instructions issued by this Ministry on the 18th of May, 1854, retaining the purport of the Circular of the 30th of July, 1859, relative to the United States at strife with the Confederate States; and you will communicate to the Imperial Government any difficulties or extraordinary occurrences that require fresh instructions.

"I repeat, &c.

(Signed) "BENVENUTO AUGUSTO DE MAGALHAES TAQUES."

"To his Excellency the President of the Province of ."

Declarations, Decrees, or Notifications were likewise issued by other maritime Powers.

The Sumter.

Of the armed ships sent to sea by the Confederate States during the first year of the war, two only, the Sumter and Nashville, entered any port belonging to a European Power. It is necessary to state briefly the circumstances which occurred in relation to these vessels.

The Sumter was a steam-ship which had been purchased by the Navy Department of the Government of the Confederate States, was commissioned as a public ship of war in the service of those States, and was commanded by an officer who had previously held a Commission in the Navy of the United States. It appears from the Message of Mr. Jefferson Davis, dated 29th April, 1861, and hereinbefore referred to, that she had at that date been purchased and manned, and was being actively prepared for sea. She sailed from the Mississippi River on the 30th June, 1861, cruized for six months, and captured seventeen prizes.

In the course of this cruize she entered (in the order herein named) ports within the dominions of the following Sovereigns and States, namely, the Queen of Spain, the King of the Netherlands, the Republic of Venezuela, the Queen of Great Britain, the Emperor of Brazil, and the Emperor of the French. She obtained coal and supplies in the ports of Cienfuegos, Curaçoa, Paramaribo, Trinidad, and Martinique successively.

At the time of her arrival at Cienfuegos she had with her six prizes, captured since her departure from New Orleans, and these she left behind her in harbour when she sailed. The Government of the United States complained to the Spanish Government of the admission of the Sumter into port, and of her having been permitted to take in coal and water; and demanded that the prizes should be released, on the ground that the capturing vessel was a pirate. The Spanish Government did not assent to the demand that the Sumter should be treated as a pirate; but the prizes which she had left in port were set at liberty by order of the Captain-General of the island, on the ground that they were proved, on examination, to have been captured within the territorial waters of Cuba under unlawful circumstances.

The Sumter approached the port of St. Anne's, Curaçoa, on the 15th July, hoisted the flag of the Confederate States, and requested permission to enter. The Governor of the island withheld this permission until assured that she was not a privateer, the regulations issued by the Government of the Netherlands prohibiting the admission of privateers unless in case of distress, but granted it upon receiving from her Commander a declaration in writing that the "Sumter was a ship of war duly commissioned by the Government of the Confederate States." In accepting this declaration as sufficient, without further proof, he acted upon the unanimous advice of his Colonial Council. The Sumter remained eight days in port, and took in coal.

With reference to these facts the Government of the United States, on the 15th of August, 1861, addressed to the Government of the Netherlands a complaint and a demand for reparation.* The latter Government answered that it had faithfully fulfilled its duty as a neutral Power, and would continue to adhere to it in future. In the despatch conveying this answer the following propositions (amongst others) were laid down and affirmed by the Government of the Netherlands:—†

* Appendix, vol. ii, p. 725.

† Ibid., p. 730.

1. According to the principles of the law of nations, all nations, without exception, may admit vessels of war belonging to a belligerent State to their ports, and accord to them all the favours which constitute an asylum.

2. As evidence that the Sumter was not a privateer, the Governor of Curaçoa was bound to be satisfied with the word of her Commander given in writing, and had no right to demand further proofs.

3. The Sumter was not, however, in fact a privateer, not being the property of private owners. She was a ship of war.

4. It cannot be admitted that all vessels carrying the Confederate flag should, as contended by the Government of the United States, be considered as privateers; because the principles of the law of nations, as well as the examples of history, require that the rights of war should be accorded to those States.

5. Much less can these vessels be regarded as pirates, or "engaged," in the words of the American Secretary of State, "in a piratical expedition against the commerce of the United States." This would be incompatible with neutrality.

Adhering to these principles the Government of the Netherlands recognized, at the same time, that it is the duty of a neutral State to take care that vessels of the belligerent parties commit no act of hostility within the limits of its territory, and do not keep watch in the ports of its dominion to attack from them vessels of the enemy; and it informed the Government of the United States that instructions on this head would be sent to the Governors of the King's colonial possessions.

Subsequently to this correspondence, and on the 19th of August, 1861, the Sumter was admitted into the port of Paramaribo, in Dutch Guiana, and coaled there, remaining in port eleven days.*

The Government of the Netherlands shortly afterwards issued orders to the authorities in its colonial possessions to the effect that no vessel of either belligerent should be allowed to take in more coal than would be sufficient for twenty-four hours' consumption, or to remain in port during a longer period than forty-eight hours.†

Before arriving at Paramaribo the Sumter had visited Puerto Cabello, in Venezuela, and the British island of Trinidad. She remained in port, at the latter place, during six days, and purchased from private merchants coal and provisions. Her Commander had applied for permission to purchase coal from the Government stores; but this had been refused by the Governor.

With reference to these facts the subjoined correspondence passed between the Government of the United States, through its Minister in London (Mr. Adams) and the Government of Her Britannic Majesty:—‡

Mr. Adams to Earl Russell.

"*Legation of the United States, September* 30, 1861.

"The Undersigned, Envoy Extraordinary and Minister Plenipotentiary of the United States, regrets to be obliged to inform the Right Honourable Earl Russell, Her Majesty's Principal Secretary of State for Foreign Affairs, that he has been instructed by the President of the United States to prefer a complaint against the authorities of the Island of Trinidad for a violation of Her Majesty's Proclamation of Neutrality, by giving aid and encouragement to the insurgents of the United States. It appears by an extract from a letter received at the Department of State from a gentleman believed to be worthy of credit, a resident of Trinidad, Mr. Francis Bernard, a copy of which is submitted herewith, that a steam-vessel known as an armed insurgent privateer, called the Sumter, was received on the 30th of July last at that port, and was permitted to remain for six days, during which time she was not only furnished with all necessary supplies for the continuance of her cruize, under the sanction of the Attorney-General, but that Her Majesty's flag was actually hoisted on the Government flag-staff in acknowledgment of her arrival.

"The Undersigned has been directed by his Government to bring this extraordinary proceeding to the attention of Lord Russell, and in case it shall not be satisfactorily explained, to ask for the adoption of such measures as shall insure, on the part of the authorities of the island, the prevention of all occurrences of the kind during the continuance of the difficulties in America.

"The Undersigned deems it proper to add, in explanation of the absence of any official representation from Trinidad to substantiate the present complaint, that there was no Consul of the United States there at the time of the arrival of the vessel. The Undersigned had the honour, a few days since, to apprise Lord Russell of the fact that this deficiency had been since supplied by preferring an application for Her Majesty's *exequatur* for a new Consul, who is already on his way to occupy his post.

"The Undersigned, &c.

(Signed) "CHARLES FRANCIS ADAMS."

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* Appendix, vol. ii, p. 734. † Ibid., p. 737. ‡ Ibid., p. 3.

Part II.

Introductory statement.

(Inclosure.)

Mr. Bernard to Mr. Seward.

(Extract.)

"Sir, "*Trinidad, August* 7, 1861.

"I beg to inform you that on the 30th ultimo a steam sloop of war (Semmes commander) carrying a Secession flag, five guns, some of a large calibre, and a crew of from 120 to 150 men, sailed boldly into our harbour, and reported herself to the authorities of this island as being on a cruize. She was last from Puerto Cabello; and since she succeeded in getting out of the Mississippi River she has already captured no less than eleven American vessels. I have ascertained the names of some of them, viz.: the Joseph Maxwell, Abe Bradford, Minnie Miller, West Wind, of Westerly, with a cargo of sugar from Havana, and Golden Rocket, which was burnt by her off the coast of Cuba.

"The Sumter landed eight of her prisoners here in a destitute condition; but a contribution has been raised here for their benefit, sufficient to supply their immediate wants, and I will take care that they are provided for until an opportunity offers to ship them to the States.

"The Sumter remained here till the 5th instant, and was allowed to supply herself with coals and other necessary outfits. The British flag was hoisted on the Government flag-staff for her arrival, and the officers of the British war-vessel Cadmus appeared to be on amicable terms with those of the Sumter. The merchant who supplied the Sumter with coals did it with the consent and approval of our Attorney-General.

"Being a loyal American, I consider it my duty to send you these informations, as there has been no Consul of our nation in this island for many months.

"I am, &c.

(Signed) "FRANCIS BERNARD."

*Earl Russell to Mr. Adams.**

"*Foreign Office, October* 4, 1861.

"The Undersigned, Her Majesty's Principal Secretary of State for Foreign Affairs, has had the honour to receive a complaint from Mr. Adams, Envoy Extraordinary and Minister Plenipotentiary of the United States at this Court, against the authorities of the Island of Trinidad for a violation of Her Majesty's Proclamation of Neutrality, by giving aid and encouragement to the insurgents of the United States.

"It appears, from the accounts received at the Colonial Office and at the Admiralty, that a vessel bearing a Secession flag entered the port of Trinidad on the 30th of July last.

"Captain Hillyar, of Her Majesty's ship Cadmus, having sent a boat to ascertain her nationality, the Commanding Officer showed a commission signed by Mr. Jefferson Davis, calling himself the President of the so-styled Confederate States.

"The Sumter, which was the vessel in question, was allowed to stay six days at Trinidad, and to supply herself with coals and provisions; and the Attorney-General of the island perceived no illegality in these proceedings.

"The Law Officers of the Crown have reported that the conduct of the Governor was in conformity to Her Majesty's Proclamation.

"No mention is made by the Governor of his hoisting the British flag on the Government flag-staff; and if he did so, it was probably in order to show the national character of the island, and not in acknowledgment of the arrival of the Sumter.

"There does not appear, therefore, any reason to believe that Her Majesty's Proclamation of Neutrality has been violated by the Governor of Trinidad, or by the Commanding Officer of Her Majesty's ship Cadmus.

"The Undersigned, &c.

(Signed) "RUSSELL."

The Government of the United States instructed Mr. Adams to inform the Government of Great Britain "that the President deeply regrets that Lord Russell is altogether unable to give to our complaint a satisfactory solution." The reason alleged for this expression of dissatisfaction was the same which had been previously rejected by the Government of the Netherlands; namely, that the Sumter was a piratical vessel, and that her officers and crew were pirates, and that they ought to be treated as such in foreign ports and waters.

Further communications on the subject subsequently passed between the two Governments. These communications are stated in the subjoined despatches, addressed respectively by Her Britannic Majesty's Minister at Washington to Her Majesty's Secretary of State for Foreign Affairs, and by the Minister of the United States in London to the Secretary of State of the United States:—

Lord Lyons to Earl Russell.

"My Lord, "*Washington, November* 4, 1861.

"Mr. Seward spoke to me, the day before yesterday, respecting the admission of the Confederate vessel Sumter into British and Dutch ports.

"With regard to the Dutch Government, Mr. Seward said that he had been obliged to cause very

* Appendix, vol. ii, p. 5.

Introductory statement.

serious remonstrances to be addressed to them, but that he had now been informed that they had given orders that the Southern privateers should not be allowed to remain more than twenty-four hours in a Dutch port. It was true, he said, that it had been declared that these orders had not been issued in deference to the representations of the United States' Government, but this was immaterial; so long as the privateers were excluded in practice, he did not care to inquire on what ground that was done.

"Mr. Seward then mentioned the reception of the Sumter at Trinidad, and alluded to your Lordship's note to Mr. Adams of the 4th of October on the subject. He said he had been obliged to send immediately instructions to Mr. Adams with regard to that note. He did not tell me the nature of those instructions, but he spoke to me of the affair in a tone of complaint, and dwelt especially on the length of time during which the Sumter had been allowed to remain at Trinidad, and on the supplies which she had obtained there. He said that France, and, he thought, all the other Powers of Europe, refused to allow privateers to remain for more than twenty-four hours in their ports. He could hardly conceive that England wished to stand alone as the only Power which admitted the enemies of the United States, without restriction, into its harbours. He supposed that the matter could hardly have been presented in this light to Her Majesty's Government.

"I observed to Mr. Seward that I supposed that in this matter each Power had looked back to precedents, and taken the course which had been usual with it on similar occasions in former times. In one point the English rule was, I said, more stringent than that of France and many other Powers, for armed vessels were not allowed to carry their prizes into British ports for any time, however short.

"Mr. Seward did not pursue the conversation. He merely said that he had wished to mention the matter to me in the hope that I might do something towards getting it satisfactorily settled.

"I have, &c.
(Signed) "LYONS."

Lord Lyons to Earl Russell.

"My Lord, "*Washington, November* 9, 1861.

"With reference to my despatch of the 4th instant, I have the honour to inform your Lordship that this morning Mr. Seward spoke to me again on the subject of the admission of Confederate vessels into British ports. He used very nearly the same language on this as on the former occasion. He seemed, however, to wish now to be understood as requesting me positively to suggest to Her Majesty's Government to adopt the rule in this respect which had, he said, been adopted by all the other Powers of Europe. He seemed to desire to make this suggestion through me, rather than in a more formal manner through the United States' Minister in London.

"I said to Mr. Seward that Great Britain had, I thought, been the first Power to place any restriction upon the admission into her ports of the armed vessels of the belligerents in the present war; and that she had no doubt followed the precedents afforded by her own previous conduct in similar cases. I did not make any difficulty about conveying Mr. Seward's suggestion to your Lordship, but I did not express any opinion as to the reception it would meet with.

"I have, &c.
(Signed) "LYONS."

Mr. Adams to Mr. Seward.

(Extract.) "*Legation of the United States,*

"Sir, "*London, December* 20, 1871

"* * * * * * * I decided to ask a Conference of Lord Russell for the purpose of talking over the substance of your communications to me in despatches No. 136 and No. 137. It was appointed for yesterday at 3 o'clock, when I enjoyed an opportunity for full and frank conversation.

* * * * * *

"On the third point his Lordship contested the fact as stated in the despatch. He recapitulated what the Government had done as regards the assistance said to have been rendered to privateers in the colonies. Supplies had been refused by the authorities in all cases. Whatever had been obtained had come from purchases of individuals. The only difference that he could find between the action of this Government and that of other nations was, that the stay of belligerent vessels was confined by the latter to twenty-four hours. As to that, he said that the omission to insert the same provision in the British orders was by no means owing to unfriendliness to the United States. On the contrary, it was thought that, if a Government vessel of theirs should put into any port, such as Malta, for example, to stay a short time, it had seemed to them churlish to issue a decree to limit it to a single day. He said he had taken some pains to make inquiries as to the action of other Governments, and, so far as he could learn, he found it in other respects substantially the same.

"I have, &c.
(Signed) "CHARLES FRANCIS ADAMS."

With the view of preventing the recurrence of similar complaints in future, and also of preventing as far as might be the possibility of any abuse of the asylum granted in British ports (as in those of other neutral Powers) to belligerent vessels, the British Government on the 31st of January, 1862, issued the subjoined Orders, to be observed in all the ports of the United Kingdom and those of Her Majesty's transmarine territories and possessions :—

Part II.

Introductory statement.

*The Secretary of State for Foreign Affairs to the Lords Commissioners of the Admiralty.**

"My Lords, "*Foreign Office, January* 31, 1862.

"Her Majesty being fully determined to observe the duties of neutrality during the existing hostilities between the United States and the States calling themselves 'the Confederate States of America,' and being, moreover, resolved to prevent, as far as possible, the use of Her Majesty's harbours, ports, and coasts, and the waters within Her Majesty's territorial jurisdiction, in aid of the warlike purposes of either belligerent, has commanded me to communicate to your Lordships, for your guidance, the following Rules, which are to be treated and enforced as Her Majesty's orders and directions.

"Her Majesty is pleased further to command that these Rules shall be put in force in the United Kingdom and in the Channel Islands on and after Thursday, the 6th day of February next, and in Her Majesty's territories and possessions beyond the seas six days after the day when the Governor or other chief authority of each of such territories or possessions respectively shall have notified and published the same, stating in such notification that the said Rules are to be obeyed by all persons within the same territories and possessions.

"I. During the continuance of the present hostilities between the Government of the United States of North America and the States calling themselves 'the Confederate States of America,' or until Her Majesty shall otherwise order, no ship of war or privateer belonging to either of the belligerents shall be permitted to enter or remain in the port of Nassau, or in any other port, roadstead, or waters of the Bahama Islands, except by special leave of the Lieutenant-Governor of the Bahama Islands, or in case of stress of weather. If any such vessel should enter any such port, roadstead, or waters by special leave, or under stress of weather, the authorities of the place shall require her to put to sea as soon as possible, without permitting her to take in any supplies beyond what may be necessary for her immediate use.

"If, at the time when this order is first notified in the Bahama Islands, there shall be any such vessel already within any port, roadstead, or waters of those islands, the Lieutenant-Governor shall give notice to such vessel to depart, and shall require her to put to sea, within such time as he shall, under the circumstances, consider proper and reasonable. If there then shall be ships of war or privateers belonging to both the said belligerents within the territorial jurisdiction of Her Majesty, in or near the same port, roadstead, or waters, the Lieutenant-Governor shall fix the order of time in which such vessels shall depart. No such vessel of either belligerent shall be permitted to put to sea until after the expiration of at least twenty-four hours from the time when the last preceding vessel of the other belligerent (whether the same shall be a ship of war, or privateer, or merchant-ship), which shall have left the same port, roadstead, or waters, or waters adjacent thereto, shall have passed beyond the territorial jurisdiction of Her Majesty.

"II. During the continuance of the present hostilities between the Government of the United States of North America and the States calling themselves 'the Confederate States of America,' all ships of war and privateers of either belligerent are prohibited from making use of any port or roadstead in the United Kingdom of Great Britain and Ireland, or in the Channel Islands, or in any of Her Majesty's Colonies or foreign possessions or dependencies, or of any waters subject to the territorial jurisdiction of the British Crown, as a station or place of resort for any warlike purpose or for the purpose of obtaining any facilities of warlike equipment; and no ship of war or privateer of either belligerent shall hereafter be permitted to sail out of or leave any port, roadstead, or waters subject to British jurisdiction, from which any vessel of the other belligerent (whether the same shall be a ship of war, a privateer, or a merchant-ship) shall have previously departed, until after the expiration of at least twenty-four hours from the departure of such last-mentioned vessel beyond the territorial jurisdiction of Her Majesty.

"III. If any ship of war or privateer of either belligerent shall, after the time when this order shall be first notified and put in force in the United Kingdom and in the Channel Islands, and in the several colonies and foreign possessions and dependencies of Her Majesty respectively, enter any port, roadstead, or waters belonging to Her Majesty, either in the United Kingdom or in the Channel Islands, or in any of Her Majesty's colonies or foreign possessions or dependencies, such vessel shall be required to depart and to put to sea within twenty-four hours after her entrance into such port, roadstead, or waters, except in case of stress of weather, or of her requiring provisions or things necessary for the subsistence of her crew, or repairs; in either of which cases the authorities of the port, or of the nearest port (as the case may be), shall require her to put to sea as soon as possible after the expiration of such period of twenty-four hours, without permitting her to take in supplies, beyond what may be necessary for her immediate use; and no such vessel, which may have been allowed to remain within British waters for the purpose of repair, shall continue in any such port, roadstead, or waters for a longer period than twenty-four hours after the necessary repairs shall have been completed: Provided, nevertheless, that in all cases in which there shall be any vessels (whether ships of war, privateers, or merchant-ships) of both the said belligerent parties in the same port, roadstead, or waters within the territorial jurisdiction of Her Majesty, there shall be an interval of not less than twenty-four hours between the departure therefrom of any such vessel (whether a ship of war, a privateer, or a merchant-ship) of the one belligerent, and the subsequent departure therefrom of any ship of war or privateer of the other belligerent; and the times hereby limited for the departure of such ships of war and privateers respectively shall always, in case of necessity, be extended, so far as may be requisite for giving effect to this proviso, but not further or otherwise.

"IV. No ship of war or privateer of either belligerent shall hereafter be permitted, while in any port, roadstead, or waters subject to the territorial jurisdiction of Her Majesty, to take in any supplies, except provisions and such other things as may be requisite for the subsistence of her crew; and except so much coal only as may be sufficient to carry such vessel to the nearest port of her own

* Appendix, vol. iii, p. 18.

country, or to some nearer destination; and no coal shall be again supplied to any such ship of war or privateer in the same or any other port, roadstead, or waters subject to the territorial jurisdiction of Her Majesty, without special permission, until after the expiration of three months from the time when such coal may have been last supplied to her within British waters, as aforesaid.

"I have, &c.

(Signed) "J. RUSSELL."

By the first and second of the foregoing Orders belligerent vessels were absolutely excluded from the ports, roadsteads, and waters of the Bahama Islands, except in case of stress of weather or of special leave granted by the Lieutenant-Governor. These islands being very near to the American coast, access to them was of little importance to the armed vessels of the United States, unless under stress of weather; whilst to vessels of the Confederate States it was of great importance, the harbours of these States being generally, though not always, effectively blockaded.

The Orders thus issued by Her Britannic Majesty's Government were more stringent and comprehensive by far than those of any other neutral Government. It was not the fact that in the ports of the French Empire, or in those of other neutral Powers generally, belligerent vessels entering without prizes were prohibited from remaining more than twenty-four hours or from purchasing supplies other than arms and military supplies.

The Sumter, after leaving Trinidad, entered in succession the ports of Paramaribo, of San Juan de Maranham in the Empire of Brazil, where she remained ten days; of Port Royal and St. Pierre in Martinique; and of Cadiz, where she remained fourteen days. She was during fourteen days in the waters of Martinique, and procured there, under the written authority of the Governor of the island, as much coal as her commander wished to take on board to enable him to extend his cruize across the Atlantic, together with other supplies. A few days after her arrival, the Iroquois, a war steamer of the United States, entered Port Royal harbour, and the subjoined correspondence passed between her Captain and the Governor:—

Captain Palmer to the Governor of Martinique.

"*United States' Steam-ship Iroquois,*

"Sir, "*Off St. Pierre, November* 15, 1861.

"As circumstances prevent my paying my personal respects to your Excellency or your representative at this place, I write to announce my arrival in the afternoon of yesterday, as well as to inform you that, to my surprise, I find a notorious steamer called the Sumter quietly coaling at the wharves, and enjoying the hospitalities of the port.

"As your Excellency cannot be aware of the character of this vessel, I denounce her to you as one that has been for some time engaged in pirating upon the commerce of the United States, robbing, burning, or otherwise destroying all American vessels which come within her reach.

"May I not hope, therefore, that your Excellency, upon this representation, will not allow her to enjoy the privileges I complain of, but direct her to leave the protection of the French flag and the immunities of a French port?

"I have, &c.

(Signed) "JAS. S. PALMER,

"Commanding U.S. Steam-ship Iroquois.

"To his Excellency the Governor of Martinique."

The Governor of Martinique to Captain Palmer.

(Translation.) "*Gouvernement de la Martinique, Cabinet du Gouverneur,*

"M. le Commandant, "*No.* 430, *Fort-de-France, le* 15 *Novembre,* 1861.

"I have the honour to reply to the letter which you addressed me this morning.

"I am not ignorant, M. le Commandant, of the presence in the roads of St. Pierre of a vessel belonging to the States of the South, who profess to have formed a separate Confederation.

"To accomplish the generous intentions of the Emperor, I wish to be hospitable to the vessels of the two belligerent parties, but I will not, nor can, without violating the orders of His Majesty, divest myself of the absolute neutrality that I ought to observe.

"That is to say to you, M. le Commandant, that if it is not my intention to refuse an anchorage to a vessel belonging to the States of the South, I offer to you, on the other hand, the same hospitality and the same facilities to the vessels belonging to the Government of the Union which you have the honour to command.

"There exist, besides, international laws, that every civilized nation scrupulously observes, and which I need scarcely recall to you, M. le Commandant, nor to the Commander of the Sumter.

"Accept &c.

(Signed) LE AMIRAL, *Gouverneur de la Martinique,*" &c.

"M. le Commandant de l'Iroquois."

The Captain of the Iroquois was also informed that, if the Sumter should leave

the port before him, he would not be permitted to weigh anchor until twenty-four hours should have elapsed after her sailing. He quitted his anchorage immediately, and cruised in the offing, with the design of intercepting her, till the night of the 23rd, when she succeeded in making her escape.

On the 18th of January, 1862, the Sumter arrived at Gibraltar. The American Consul at that port immediately addressed a letter to the Governor, informing him of the fact, and expressing a hope that he would "give such orders as may prevent this rebel cruizer from obtaining the necessary facilities, and making equipments for the continuance of her unlawful vocation." To this letter the following answer was returned by the Colonial Secretary of the dependency :—*

Mr. Freeling to Mr. Sprague.

"Sir, "*Secretary's Office, Gibraltar, January* 19, 1862.

"I am directed by his Excellency the Governor to acknowledge the receipt of your letter of yesterday's date on the subject of the Confederate steamer Sumter, now at anchor in this bay.

"His Excellency desires me, in reply, to inform you that the instructions contained in Her Majesty's Proclamation of the 13th of May last (published in the 'Gibraltar Chronicle' of the 1st of June, 1861), with reference to the strict neutrality to be observed by Her Majesty's subjects in the contest between the Government of the United States of America and certain States styling themselves 'the Confederate States of America,' will be strictly carried out with regard to the rights and obligations towards both belligerent parties.

"I have, &c.

(Signed) "S. FREELING, *Colonial Secretary.*"

On the 21st January, 1862, the Consul addressed a letter to the Senior Naval Officer at Gibraltar, asking to be informed, for the guidance of the masters of American vessels then lying in the bay, what rules he intended to lay down and enforce "in case any American vessels should leave port before the Sumter, or if the Sumter should be outside the port, waiting to intercept them." He was informed, in answer, that "American merchant-vessels quitting Gibraltar whilst the Sumter is in the bay, are entitled to a start of twenty-four hours before being pursued with a hostile intention, and it is the duty of the authorities concerned to see that such protection is extended over them." He was further informed that notice of this regulation had been given to the Commander of the Sumter.†

On the same 21st of January, the Consul telegraphed to the Minister of the United States in London information that the Sumter was still in harbour, and added, "The British Governor observes strict neutrality, in conformity with the Queen's Proclamation."

The Sumter was, in fact, according to the statements of the United States' Consul, unable to leave Gibraltar for want of coal, the Consul having succeeded in inducing the merchants of the place to refuse to supply her with coal, though her Commander offered 50 per cent. more than the market price. She then applied to be allowed to purchase coal from the Government stores; but this was refused, in conformity with the rule observed throughout the war, at all British ports, towards the vessels of both belligerents.‡

On the 12th February, 1862, the United States' war-steamer Tuscarora arrived at Gibraltar, and proceeded to coal at the neutral port of Algeciras. She was soon afterwards joined by the United States' war-steamer Ino, and subsequently by the Kearsarge; and the Ino and Kearsarge remained off Algeciras waiting to intercept the Sumter. The Sumter was paid off in April, and lay in harbour till December 1862, when she was sold by public auction (after having been first deprived of her armament) to a British subject resident at Liverpool. The United States' Consul addressed to the Governor a protest against the sale, on the ground, first, that the Sumter had come into the possession of the Confederate Government as a prize of war (which was proved not to be the fact, the vessel having been purchased by that Government from a private owner), and secondly, that the sale was made "for the purpose of avoiding a capture by the cruizers of the United States." This protest was not accompanied by any proofs, but notice of it was officially published by the Colonial Secretary before the day fixed for the sale.§

With reference to this sale the subjoined letters passed between the United States' Minister in London and Her Britannic Majesty's Secretary of State for Foreign Affairs:—‖

Mr. Adams to Earl Russell.

"My Lord, "*Legation of the United States, London, December* 30, 1862.

"On the 19th of this month, I am informed by the Consul of the United States at Gibraltar, that a public sale is said to have been made of the steamer Sumter, a vessel which had committed

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* Appendix, vol. ii, p. 13. † Ibid., pp. 9 and 10. ‡ Ibid., p 18.
§ Ibid., p. 45. ‖ Ibid., p. 47.

much depredation upon the commerce of the United States, and which had taken shelter in that port from pursuit from the national ships.

"Having the strongest reason, from the known character and previous conduct of the alleged purchaser, to believe that this sale is effected solely for the purpose of rescuing the vessel from its present position, and of making use of Her Majesty's flag to convert it to new purposes of hostilities to the United States, I must pray your Lordship's attention to the necessity under which I am placed of asking the assistance of Her Majesty's Government to prevent any risk of damage to the United States from a fraudulent transaction in one of her ports; or, in default of it, of declining to recognize the validity of the transfer, should that vessel subsequently be found by the armed ships of the United States sailing on the high seas.

"Renewing, &c.
(Signed) "CHARLES FRANCIS ADAMS."

*Earl Russell to Mr. Adams.**

"Sir, "*Foreign Office, January* 1, 1863.

"I have the honour to acknowledge the receipt of your letter of the 30th ultimo, calling my attention to the circumstances attending the sale of the steamer Sumter at Gibraltar, and I have the honour to state to you, in reply, that the Law Officers of the Crown have already the case before them.

"I have, &c.
(Signed) "RUSSELL."

Earl Russell to Mr. Adams.†

"Sir, "*Foreign Office, January* 15, 1863.

"With reference to my letter of the 1st instant, in which I acknowledged the receipt of your letter of the 30th ultimo, respecting the sale of the Sumter at Gibraltar, I have now the honour to inform you that Her Majesty's Naval and Military officers at that port have received instructions not to give any protection to that vessel beyond the waters of Gibraltar; but it will of course be clearly understood that those instructions do not preclude the owners of the Sumter, if that vessel should be taken by United States' cruizers, from appealing, according to the usage and practice of international law, to the prize court in the United States against the captors; nor will Her Majesty's Government be precluded from taking any course which may appear hereafter to them proper, if the Sumter, now assumed to be British property, should be hereafter condemned, or otherwise dealt with in any manner which might not be, in their judgment, warranted by international law.

"I have, &c.
(Signed) "RUSSELL."

Mr. Adams had, on the 3rd January, 1863, telegraphed to the American Consul at Gibraltar that Captain Bryson, commanding the United States' war-steamer Chippewa, was to endeavour to capture the Sumter should she leave Gibraltar under the British flag; and on the 19th January, 1863, he again telegraphed, "The Sumter should be captured if she goes out of the British waters on the high seas. If she have nominal British papers she must be sent home for adjudication as prize." The American Consul, on the 21st January, answered as follows:—"Your telegram communicated to our Commanders: Sumter coaling again and provisioning to-day." She sailed from Gibraltar on the 7th February, was not captured, and reached Liverpool on the 13th.‡ At Liverpool she remained until the 3rd July, 1863, when she sailed as a merchant-vessel, without armament, and carrying as freight some heavy ordnance, which could not possibly have been used on board of her. She had undergone repairs, but all fittings for warlike purposes had been removed from her, and she had been renamed the "Gibraltar." While in port she had been carefully watched by order of Her Majesty's Government, as a precaution lest she should be in any way armed or equipped for war; and she was not permitted to clear till it had been satisfactorily shown that she was in no respect so equipped and had no armament.§ She is believed to have been wrecked at last in attempting to enter Charleston. After the time when she entered the harbour of Gibraltar she never appeared at sea as an armed ship, nor was employed to commit hostilities against the United States or their citizens.

With reference to the sale and transfer of this vessel, the views of Her Britannic Majesty's Government were further expressed in the following letter addressed to the Minister of the United States in London:—‖

Earl Russell to Mr. Adams.

"Sir, "*Foreign Office, April* 20, 1863.

"There are several statements in your letter of the 14th of March respecting the sale of the Sumter, at Gibraltar, to a British owner, upon which, if any advantage were likely to result from further discussion of the subject, I should feel it right to observe. But it appears to me sufficient to

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* Appendix, vol. ii, p. 52. † Ibid., p. 54. ‡ Ibid., p. 59.
§ Ibid., pp. 64–80. ‖ Ibid., p. 62.

say, that you seem to have confounded, both in your reasoning upon the subject and in your reference to authority, the positions of a neutral and belligerent in regard to the sale of ships belonging to another belligerent, and to have forgotten, as in the instance of your reference to a statement in a passage on the law of prize, that no neutral State, such as Great Britain now is, administers prize law in favour of either belligerent.

"The neutral and belligerent have distinct rights in the matter: the neutral has a right to acquire such property offered to him for purchase, but the belligerent may, in the particular circumstances of the case, not recognize the transfer of such property as being that of his enemy, only parted with to the neutral in order to protect it from capture on the high seas. The Prize Court of the belligerent, when property so circumstanced is brought before it, decides whether the transfer is fair or fraudulent.

"The British Government, when neutral, is not bound to refuse to a British subject the right to acquire by purchase a vessel which a belligerent owner maydesire to part with, but it would not deny the right of the adverse belligerent to ascertain, if such vessel were captured by its cruizers, whether the vessel had rightfully, according to the law of nations, come into the possession of the neutral; and if Great Britain were herself belligerent, she would not complain of a neutral Government allowing one of its subjects to acquire by purchase a vessel which her adversary might desire to part with, though she would have the right of capturing such vessel on the high seas, and sending it before the Prize Court for judgment as to whether the vessel had rightfully, according to the law of nations, become the property of a neutral owner.

"I have, &c.
(Signed) "RUSSELL."

The course pursued by Her Majesty's Government in this case was adhered to in 1864 in the case of the Confederate ship Georgia. It was afterwards judged expedient by the Government to prohibit vessels of war belonging to either belligerent from being dismantled or sold in British ports.

It is not the duty of a neutral Government to prohibit the sale within its territory of a ship owned by a belligerent to a neutral purchaser. This is a transaction which in no way concerns the neutral Government, and with which it cannot be called upon to interfere. Under certain circumstances indeed—as in the case of a ship of war driven by superior force to take refuge in a neutral port—such a sale may be liable to be declared void by a prize court of the other belligerent. But this is a jurisdiction exercised by prize courts alone. Until so set aside, the sale (even in the case supposed above) is valid everywhere, and operates to transfer the property to the neutral purchaser. Nor again can a neutral Government be called upon to apply rules applicable exclusively to vessels of war to a vessel which, having originally been armed for war, has been disarmed and sold as aforesaid, unless it clearly appear that the sale was a fictitious transaction, intended to disguise, without altering, the true character of the ship.

The Nashville.

The Nashville, an armed steamer commissioned as a ship of war of the Confederate States, arrived at the British dependency of Bermuda on the 30th October, 1862, having sailed from Charleston on the 26th.* Her Commander applied for leave to draw a supply of coals from Her Majesty's dockyard, but this request was refused. She procured coal from a private yard, and sailed on the 4th November. On the 21st November she entered the harbour of Southampton, having, on her way, taken and destroyed an American packet-ship (the Harvey Birch), and on the 22nd went into dock for repairs.† On the same day directions were sent from the Foreign Office that she "should not be allowed to equip herself more completely as a vessel of war, or to take in guns or munitions of war."

On the same 22nd of November Mr. Adams addressed a Note to Earl Russell in reference to the Nashville, inclosing certain papers received from the Consul of the United States in London.‡ From statements in these papers it would, Mr. Adams alleged, appear that the Nashville was not equipped under a commission as a ship of war, nor even with the pretence of a letter of marque; and, further, that she was sent to England with the avowed design that she should be refitted inEnglish ports and made a formidable vessel of war, and that the officers who came in her should be put in command of two other ships which were alleged to be then fitting-out in the ports of Great Britain for the purpose of carrying on war against the United States. He proceeded to request that Her Majesty's Government would cause inquiry to be made, and would adopt such measures as the case, upon investigation, might seem to demand. "This inquiry may be solicited to the ascertainment of two classes of facts: the first, as to the authority possessed by this vessel to commit so aggressive an act on the citizens of a friendly Power, and then to claim a refuge and recognition in the harbours of Great Britain. The second, in case

* Appendix, vol. ii, p. 87. † Ibid., pp. 90 and 91. ‡ Ibid., p. 92.

the nature of that authority be deemed sufficient—at least in the view of Her Majesty's Government—as to the purposes for which the ship is alleged to have come across the ocean, to wit, the making more effective preparation in the ports of Great Britain for carrying on a war against the people of a friendly nation. In the former case, the question will arise whether the vessel be or be not subject to due process of law as a common disturber of the peace of the world; in the second, whether a recognized belligerent shall or shall not be permitted with impunity to violate the terms of Her Majesty's Proclamation forbidding the fitting out, within the ports of Great Britain, of any armament intended to be used against a nation with which she is at peace."

The foregoing Note was immediately answered by Earl Russell, as follows :—

*Earl Russell to Mr. Adams.**

"*Foreign Office, November* 23, 1861.

"Lord Russell presents his compliments to Mr. Adams, and begs leave to acquaint him that his letter and the inclosure shall receive the immediate attention of Her Majesty's Government.

"Lord Russell has already given directions that no infringement of the Foreign Enlistment Act shall be permitted in regard to the Nashville."

On the 28th November, 1861, Earl Russell addressed to Mr. Adams, with reference to his Note of the 22nd, a further Note, which was as follows:—

Earl Russell to Mr. Adams.†

"*Foreign Office, November* 28, 1861.

"The Undersigned, Her Majesty's Principal Secretary of State for Foreign Affairs, has the honour to inform Mr. Adams, Envoy Extraordinary and Minister Plenipotentiary of the United States at this Court, that his note of the 22nd instant has been the subject of careful and anxious consideration by Her Majesty's Government.

"Mr. Adams, after reciting the capture and destruction by fire of the United States' merchant-ship on the high seas by order of the Commander of the armed steamer called the Nashville, and the subsequent arrival of the Nashville in the port of Southampton, asks for an inquiry as to two classes of facts: the first, 'as to the authority possessed by this vessel to commit so aggressive an act on the citizens of a friendly Power, and then to claim a refuge in the harbours of Great Britain;' the second, 'in case the nature of that authority be deemed sufficient, at least in the view of Her Majesty's Government, as to the purposes for which the ship is alleged to have come across the ocean, to wit, the making more effective preparations in the ports of Great Britain for carrying on war against the people of a friendly nation.'

"Her Majesty's Government have directed their inquiries to both these points, and also to the state of the law as applicable to the facts thus by them ascertained.

"With regard to the first point, the Undersigned has to state that the Nashville appears to be a Confederate vessel of war; her commander and officers have commissions in the so-styled Confederate Navy; some of them have written orders from the Navy Department at Richmond to report to Lieutenant Pegram 'for duty' on board the Nashville, and her crew have signed articles to ship in the Confederate Navy.

"In these circumstances the act done by the Nashville, of capturing and burning on the high seas a merchant-vessel of the United States, cannot be considered as an act 'voluntarily undertaken by individuals not vested with powers generally acknowledged to be necessary to justify aggressive warfare,' nor does it at all 'approximate within the definition of piracy.'

"Such being the answer of Her Majesty's Government on the first point raised by Mr. Adams, the Undersigned passes to the second.

"The Undersigned stated to Mr. Adams, in his informal note of the 23rd instant, that he had already given directions that no infringement of the Foreign Enlistment Act should be permitted in regard to the Nashville. In fact, directions had already been given to prevent the Nashville from augmenting her warlike forces within Her Majesty's jurisdiction in contravention of the Foreign Enlistment Act.

"With respect to the allegation made by Mr. Adams that some of the officers of the Nashville are to be put in command of vessels now fitting out in British ports for purposes hostile to the Government of the United States, the Undersigned can only say that, if reasonable evidence can be procured to that effect, all parties concerned who shall be acting in contravention of the Foreign Enlistment Act shall be legally proceeded against, with a view to the punishment of the persons and to the forfeiture of the vessels.

"Having thus answered Mr. Adams upon the two points to which his attention was called, the Undersigned has only further to say that, if, in order to maintain inviolate the neutral character which Her Majesty has assumed, Her Majesty's Government should find it necessary to adopt further measures within the limits of public law, Her Majesty will be advised to adopt such measures.

"It is the earnest desire of Her Majesty to preserve intact the friendly relations between Her Majesty and the United States of America.

"The Undersigned, &c.

(Signed) "RUSSELL."

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* Appendix, vol. ii, p. 95.

† Ibid., p. 101.

Introductory statement.

On the 2nd December, 1861, Mr. Adams answered the foregoing Note as follows :—

*Mr. Adams to Earl Russell.**

"*Legation of the United States, London, December* 2, 1861.

"The Undersigned, Envoy Extraordinary and Minister Plenipotentiary of the United States, has the honour to acknowledge the receipt of a note from the Right Honourable Earl Russell, Her Majesty's Principal Secretary of State for Foreign Affairs, dated on the 28th of November, and in answer to the note of the Undersigned soliciting an investigation into the case of the armed steamer the Nashville.

"Whilst the Undersigned regrets that Her Majesty's Government has determined to give what he cannot but think a liberal construction to the evidence furnished of the character of the voyage of the Nashville, it is yet a source of great satisfaction to him to learn the intention expressed by the Government to apply all its power to the prevention of measures taken within this kingdom by ill-disposed persons to fit out enterprises of a hostile character to the United States. The Undersigned entertains no doubt that this information, which has been already transmitted by him to this Government, will be received with much pleasure.

"The Undersigned, &c.

(Signed) "CHARLES FRANCIS ADAMS."

Reports of the nature of the repairs which the Nashville was undergoing, showing that nothing whatever was being done to fit her more completely as a vessel of war, were from time to time received at the Foreign Office from the Senior Naval Officer at Southampton, and were forwarded to Mr. Adams for his information. Mr. Adams, in acknowledging the receipt of these reports, added, "It is a source of gratification to him (Mr. Adams) to observe the continued supervision exercised by Her Majesty's Government over the outfit of that vessel."—(28th December, 1861).†

On the 15th December, 1861, the United States' war-steamer Tuscarora arrived in Southampton Water. She remained there, occasionally shifting her anchorage, until after the departure of the Nashville, which occurred on the 3rd February following. While the two ships remained in British waters, Her Majesty's Government enforced with strict impartiality the rule which had previously been enforced by the French authorities at Martinique in the case of the Sumter and Iroquois, that, if either should sail, the other should not follow within twenty-four hours afterwards. The facts are stated in reports addressed by Captain Patey as Senior Naval Officer to Her Majesty's Board of Admiralty.‡ Both ships coaled at Southampton.

In July, 1862, the Tuscarora returned to Southampton, and remained in that port undergoing repairs for three weeks or thereabouts.

General Course pursued by Her Britannic Majesty's Government, and by other Maritime Powers in regard to the reception of Belligerent Cruizers.

From the beginning of the war to the end of it, Her Britannic Majesty's Government scrupulously observed, in respect of vessels entering British ports or waters under the flag of either belligerent, the duties of a neutral Power. The cruizers of both were admitted upon the same terms; and the regulations which it was found necessary to make from time to time in order to prevent the hospitality thus accorded from being abused, whether by design or through inadvertence, were impartially applied to both. Unremitting care and vigilance were employed to prevent these necessary precautions from being infringed or eluded, and especially to prevent any belligerent vessel from engaging in hostilities, or from enlisting seamen or otherwise increasing its military force, within British territory, or using such territory as a station from whence to observe and attack enemy's ships. The difficulties occasioned, especially in Her Majesty's Colonial possessions, by the resort of belligerent cruizers to British ports and waters, were considerable, and called for the exercise of much judgment and moderation on the part of the local authorities. By United States' cruizers the ports and waters of Her Majesty's dominions were resorted to for coaling and other purposes more frequently than by vessels of the Confederate States. The impartial neutrality maintained in these respects by Her Majesty's Government was nevertheless made a frequent subject of complaint by the Government of the United States, which continued to insist that Confederate vessels ought to have been treated as piratical, or at least excluded altogether; whilst the Confederate States, on their part, complained that the regulations enforced were unequal in operation, and unduly disadvantageous to a belligerent whose ports and coasts were under blockade.

The neutrality observed by Great Britain was observed also throughout the war by other maritime Powers. By them, as by Great Britain, the armed vessels of both belligerents were admitted impartially and indifferently into their ports, subject to such regulations and conditions as they respectively judged it expedient to impose for their own protection, and to prevent their hospitality from being abused.

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* Appendix, vol. ii, p. 102. † Ibid., p. 105.

‡ For a summary of the proceedings of the two vessels, see Appendix, vol. ii, p. 120.

PART III.

Introductory statement.

Statement on International Rights and Duties; on the Powers which were possessed by Her Britannic Majesty's Government of preventing unlawful Equipments, and the Manner and Circumstances in and under which these Powers were exercised during the War.

With a view to enable the Tribunal to form a just appreciation of the circumstances under which certain vessels were procured from ports in Great Britain by the Government of the Confederate States, it will be proper to state, in the first place, some general propositions, applicable to the subject, which are believed by Her Britannic Majesty's Government to be in accordance with international law and practice; secondly, to explain the means of prevention which were at the command of Her Majesty's Government; and, thirdly, to describe in some detail the manner in which those means of prevention were exercised during the war.

General Propositions.

Her Britannic Majesty's Government believes the following propositions to be in accordance with the principles of international law and the practice of nations:—

1. A neutral Government is bound to exercise due diligence, to the intent that no place within its territory be made use of by either belligerent as a base or point of departure for a military or naval expedition, or for hostilities by land or sea.

2. A neutral Government is not, by force of the above-mentioned obligation or otherwise, bound to prevent or restrain the sale within its territory, to a belligerent, of articles contraband of war, or the manufacture within its territory of such articles to the order of a belligerent, or the delivery thereof within its territory to a belligerent purchaser, or the exportation of such articles from its territory for sale to, or for the use of, a belligerent.

3. Nor is a neutral Government bound, by force of the above-mentioned obligation or otherwise, to prohibit or prevent vessels of war in the service of a belligerent from entering or remaining in its ports or waters, or from purchasing provisions, coal, or other supplies, or undergoing repairs therein; provided that the same facilities be accorded to both belligerents indifferently; and provided also that such vessels be not permitted to augment their military force, or increase or renew their supplies of arms or munitions of war, or of men, within the neutral territory.

4. The unlawful equipment, or augmentation of force, of a belligerent vessel within neutral waters being an offence against the neutral Power, it is the right of the neutral Power to release prizes taken by means or by the aid of such equipment or augmentation of force, if found within its jurisdiction.

5. It has been the practice of maritime Powers, when at war, to treat as contraband of war vessels specially adapted for warlike use and found at sea under a neutral flag in course of transportation to a place possessed or occupied by a belligerent. Such vessels have been held liable to capture and condemnation as contraband, on proof in each case that the destination of the ship was an enemy's port, and provided there were reasonable grounds for believing that she was intended to be sold or delivered to or for the use of the enemy.

6. Public ships of war in the service of a belligerent, entering the ports or waters of a neutral, are, by the practice of nations, exempt from the jurisdiction of the neutral Power. To withdraw or refuse to recognize this exemption without previous notice, or without such notice to exert, or attempt to exert, jurisdiction over any such vessel, would

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be a violation of a common understanding, which all nations are bound by good faith to respect.

7. A vessel becomes a public ship of war by being armed and commissioned, that is to say, formally invested by order or under the authority of a Government with the character of a ship employed in its naval service and forming part of its marine for purposes of war. There are no general rules which prescribe how, where, or in what form the commissioning must be effected, so as to impress on the vessel the character of a public ship of war. What is essential is, that the appointment of a designated officer to the charge and command of a ship likewise designated be made by the Government, or the proper Department of it, or under authority delegated by the Government or Department, and that the charge and command of the ship be taken by the officer so appointed. Customarily, a ship is held to be commissioned when a commissioned officer appointed to her has gone on board of her and hoisted the colours appropriated to the military marine. A neutral Power may indeed refuse to admit into its own ports or waters as a public ship of war any belligerent vessel not commissioned in a specified form or manner, as it may impose on such admission any other conditions at its pleasure, provided the refusal be applied to both belligerents indifferently; but this should not be done without reasonable notice.

8. The act of commissioning, by which a ship is invested with the character of a public ship of war, is, for that purpose, valid and conclusive, notwithstanding that the ship may have been at the time registered in a foreign country as a ship of that country, or may have been liable to process at the suit of a private claimant, or to arrest or forfeiture under the law of a foreign State. The commissioning Power, by commissioning her, incorporates her into its naval force; and by the same act which withdraws her from the operation of ordinary legal process assumes the responsibility for all existing claims which could otherwise have been enforced against her.

9. Due diligence on the part of a sovereign Government signifies that measure of care which the Government is under an international obligation to use for a given purpose. This measure, where it has not been defined by international usage or agreement, is to be deduced from the nature of the obligation itself, and from those considerations of justice, equity, and general expediency on which the law of nations is founded.

10. The measure of care which a Government is bound to use in order to prevent within its jurisdiction certain classes of acts, from which harm might accrue to foreign States or their citizens, must always (unless specifically determined by usage or agreement) be dependent, more or less, on the surrounding circumstances, and cannot be defined with precision in the form of a general rule. It would commonly, however, be unreasonable and impracticable to require that it should exceed that which the Governments of civilized States are accustomed to employ in matters concerning their own security or that of their own citizens. That even this measure of obligation has not been recognized in practice might be clearly shown by reference to the laws in force in the principal countries of Europe and America. It would be enough, indeed, to refer to the history of some of these countries during recent periods, for proof that great and enlightened States have not deemed themselves bound to exert the same vigilance and employ the same means of repression, when enterprises prepared within their own territories endangered the safety of neighbouring States, as they would probably have exerted and employed had their own security been similarly imperilled.

11. In every country where the Executive is subject to the laws, foreign States have a right to expect—

(*a.*) That the laws be such as in the exercise of ordinary foresight might reasonably be deemed adequate for the repression of all acts which the Government is under an international obligation to repress;

(*b.*) That, so far as may be necessary for this purpose, the laws be enforced and the legal powers of the Government exercised.

But foreign States have not a right to require, where such laws exist, that the Executive should overstep them in a particular case, in order to prevent harm to foreign States or their citizens; nor that, in order to prevent harm to foreign States or their citizens, the Executive should act against the persons or property of individuals, unless upon evidence which would justify it in so acting if the interests to be protected were its own or those of its own citizens. Nor are the laws or the mode of judicial or administrative procedure which exist in one country to be applied as constituting a rule or standard of comparison for any other country. Thus, the rules which exist in Great Britain as to the admission and probative force of various kinds of testimony, the evidence necessary to be produced in certain cases, the questions proper to be tried by a jury, the functions of the Executive in regard to the prevention and prosecution of offences, may differ, as the

organization of the magistrature and the distribution of authority among central and local officers also differ, from those which exist in France, Germany, or Italy. Each of these countries has a right, as well in matters which concern foreign States or their citizens, as in other matters, to administer and enforce its own laws in its own forum, and according to its own rules and modes of procedure; and foreign States cannot justly complain of this, unless it can be clearly shown that these rules and modes of procedure conflict in any particular with natural justice, or in other words, with principles commonly acknowledged by civilized nations to be of universal obligation.

In connection with the foregoing propositions are to be taken the three Rules stated in Article VI of the Treaty, and accepted by Her Britannic Majesty's Government in the manner expressed in that Article.

Neutrality Laws—Law of the United States.

The case of a vessel which is dispatched from a neutral port to or for the use of a belligerent, after having been prepared within the neutral territory for warlike use, is one which may be regarded from different points of view, and may fall within the operation of different principles. The ship herself may be regarded merely as an implement or engine of war, sold or manufactured to order within neutral territory, and afterwards transported therefrom, and the whole transaction as falling within the scope of the principles applicable to the sale, manufacture, shipment, and transportation of articles contraband of war; or, on the other hand, the preparation and despatch of the ship may be viewed as being really and in effect the preparation and commencement of a hostile expedition. The circumstances of each case can alone determine from which of these two points of view it may most fitly be regarded, and to which class the transaction ought to be assigned. But the difficulty of drawing a clear, precise, and intelligible line between these two classes of transactions has always been considerable in theory, and still greater in practice; and it was enhanced to the utmost during the Civil War by the ingenuity and audacity of American citizens, who were engaged in carrying on hostilities against the Government of the United States, and were desirous of availing themselves for this purpose of the shipbuilding and manufacturing resources of Great Britain. This will sufficiently appear from the narrative which follows; and it will be seen also how serious and incessant were the trouble and embarrassment which these enterprises occasioned to Her Majesty's Government. It is by the many difficulties encountered and by the experience acquired during the war that Her Majesty's Government was finally led to the conclusion that it was expedient not only to enlarge the scope of its municipal law in relation to this subject beyond what has hitherto been deemed necessary in any other country, but further, to accept for itself, and propose to other Powers, rules of international obligation somewhat more stringent and comprehensive than are to be found in earlier expositions of the law of nations.

The acts of which the Government of the United States is understood to complain belong to a class which have not commonly been made an object of prohibitory legislation. In few countries, or in none, according to the information received by Her Britannic Majesty's Government, did the law directly prohibit such acts, or make any definite provision for preventing them, at the time when this war began, except in the United States and Great Britain. Laws are not made till the necessity for them has arisen. In the United States the necessity arose at a very early period in the history of that Commonwealth, and has again repeatedly presented itself at various times. The first maritime war in which the United States held the position of a neutral Power was that which commenced in 1793, when the French Republic declared war against Great Britain and against the United Provinces of the Netherlands. Within three months after the declaration of war several privateers had been procured, equipped, armed and commissioned in ports of the United States, to cruize under the French flag against the commerce of Great Britain, with which the United States were at peace. They were not only fitted out in American ports, but were owned, officered, and manned in large proportion by American citizens. The measures adopted by the Executive of the United States to restrain these enterprises proved inadequate; they were renewed from time to time, and the persons who took part in them were not punished; and on the 5th June, 1794, an Act of Congress, intituled "An Act in addition to the Act for the Punishment of Certain Crimes against the United States" was passed, for amending the law in this respect. This Act was a temporary one, to continue in force for two years, and thenceforth until the end of the then next session of Congress. Its provisions were re-enacted on the 2nd March, 1797, and were made perpetual by an Act of Congress passed on the 24th April, 1800. It was not completely effectual. From the published reports of cases decided in the American

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Courts, it appears that depredations on British commerce were again and again committed by French privateers, subsequently fitted out and armed for war in ports of the United States.

In March 1806 an expedition against Spain (with which the United States were at peace) was fitted out in New York by one Miranda, a native of Peru, who had served in the French Republican Army under Dumouriez. This expedition, which consisted of an armed vessel carrying 18 guns and two schooners, sailed for its destination. Orders were issued for arresting it, but they were too late. Persons who participated in it were afterwards prosecuted, but were acquitted by the jury before whom they were tried.

In the year 1810 war broke out between Spain and her American Colonies, and in 1816, Portugal engaged in the war on the side of Spain. The United States remained neutral. It appears from the correspondence which subsequently passed between the Government of the United States, and the Governments of Spain and Portugal, as well as from the published reports of cases decided in the Courts of the United States, that a considerable number of privateers were at various times during the war, but chiefly in the earlier part of it, fitted out, manned, and armed, in ports of the United States, for the purpose of cruizing against the commerce of Spain and against that of Portugal, and that large numbers of Spanish and Portuguese ships were captured by these privateers. In the despatches of the Portuguese Minister at Washington not fewer than twenty-six of such privateers are mentioned as having been fitted out and armed at a single American port; and fifty ships belonging to Portuguese citizens are stated to have been captured between the years 1816 and 1819 inclusive. It was further stated that the privateers were for the most part not only fitted out, but owned and commanded, by citizens of the United States. The facts alleged do not appear to have been disputed by the Government of the United States. In answer to the first representation of the Portuguese Minister, in which he indicated ten ships which had armed, or were believed to be then arming, at Baltimore, Mr. Monroe, then Secretary of State, wrote as follows :—

The United States' Secretary of State to the Portuguese Minister at Washington.

"Sir, "*Washington, December* 27, 1816.

"I have had the honour to receive your letter of the 20th instant, complaining of certain equipments of armed vessels from Baltimore, and of instructions given to the commander of one of those vessels to attack conditionally the vessels of your Sovereign, the King of Portugal and Brazil. You are aware that these vessels are equipped without any authority from this Government, and on pretexts very different from those which you assign. You are also aware that the existing laws do not authorize the President to interfere in such cases, and it is your object to obtain such amendment of them as may be sufficient for the purpose.

"I have communicated your letter to the President, and have now the honour to transmit to you a copy of a Message which he has addressed to Congress on the subject, with a view to obtain such an extension by law of the Executive power, as will be necessary to preserve the strict neutrality of the United States in the existing war between Spain and the Spanish Colonies, and effectually to guard against the danger in regard to the vessels of your Sovereign, which you have anticipated.

"As soon as a law may be passed on this subject, I shall have the honour of communicating it to you, and I avail myself of this opportunity of assuring you of the great interest which the President takes in cultivating the most kindly relations with your Sovereign, his subjects and dominions.

"I have, &c.

(Signed) "JAMES MONROE.

"Chevalier J. Correa de Serra."

On the 26th December, 1816, President Madison communicated to Congress the following Message :—

"*Washington, December* 26, 1816.

"It is found that the existing laws have not the efficacy necessary to prevent violations of the obligations of the United States as a nation at peace toward belligerent parties, and other unlawful acts on the high seas by armed vessels equipped within the waters of the United States.

"With a view to maintain more effectually the respect due to the laws, to the character, and to the neutral and pacific relations of the United States, I recommend to the consideration of Congress the expediency of such further legislative provisions as may be requisite for detaining vessels actually equipped or in a course of equipment with a warlike force, within the jurisdiction of the United States; or, as the case may be, for obtaining from the owners or commanders of such vessels adequate securities against the abuse of their armaments, with the exceptions in such provisions of the cases of merchant-vessels furnished with the defensive armaments used on distant and dangerous expeditions, and of a private commerce in military stores permitted by our laws, and which the law of nations does not require the United States to prohibit.

(Signed) "JAMES MADISON."

Papers relating to the same subject were at the same time laid by the Committee on

Foreign Affairs before the House of Representatives. Among these was one by Mr. Monroe, then Secretary of State, in which he reported as follows:—

"The provisions necessary to make the laws effectual against fitting out armed vessels in our ports for the purpose of hostile cruizing seem to be:—

"1st. That they should be laid under bond not to violate the Treaties of the United States or the obligations of the United States under the law of nations, in all cases where there is reason to suspect such a purpose on foot, including the cases of vessels taking on board arms and munitions of war applicable to the equipment and armament of such vessels subsequent to their departure.

"2nd. To invest the Collectors, or other Revenue officers where there are no Collectors, with power to seize and detain vessels under circumstances indicating strong presumption of an intended breach of the law; the detention to take place until the order of the Executive on a full representation of the facts had thereupon can be obtained. The statute-book contains analogous powers to this above suggested. (See particularly the 11th section of the Act of Congress of April 25, 1808.)

"The existing laws do not go to this extent. They do not authorize the demand of security in any shape, or any interposition on the part of the magistracy as a preventive where there is reason to suspect an intention to commit the offence. They rest upon the general footing of punishing the offence where, if there be full evidence of the actual perpetration of the crime, the party is bonded over after the trial to the penalty denounced."

On the 3rd March, 1817, a short Act was passed, by the first section of which provision was made (by the introduction of the words "colony, district, or people") for the case of a belligerent community or body of persons not recognized as a sovereign State.

The second and third sections were as follows:—

"Sec. 10. And be it further enacted, That the owners or consignees of every armed ship or vessel sailing out of the ports of the United States, belonging wholly or in part to citizens thereof, shall enter into bond to the United States, with sufficient sureties, prior to clearing out the same, in double the amount of the value of the vessel and cargo on board, including her armament, that the said ship or vessel shall not be employed by such owners to cruize or commit hostilities against the subjects, citizens, or property of any foreign Prince or State, or of any colony, district, or people, with whom the United States are at peace.

"Sec. 11. And be it further enacted, That the Collectors of the Customs be, and they are hereby, respectively authorized and required to detain any vessel manifestly built for warlike purposes, and about to depart the United States, of which the cargo shall principally consist of arms and munitions of war, when the number of men shipped on board, or other circumstances, shall render it probable that such vessel is intended to be employed by the owner or owners to cruize or commit hostilities upon the subjects, citizens, or property of any foreign State, or of any colony, district, or people, with whom the United States are at peace, until the decision of the President be had thereon, or until the owner or owners shall give such bond and security as is required of the owners of armed ships by the preceding Section of this Act."

It is to be remarked that these provisions were enacted on a representation by the Secretary of State that it had become necessary, in order to make the laws against fitting out armed vessels effectual, to invest the collectors or other revenue officers with a preventive power to seize and detain on a reasonable suspicion, or at any rate on a "strong presumption," of an intended breach of the law. The only cases in which Congress was willing to confer this power were those defined in these sections, neither of which could by any latitude of construction be so extended as to include a vessel which at the time of its departure, was neither armed nor laden with a cargo consisting principally of arms and munitions of war. Nor would the second section embrace any vessel not owned wholly or in part by citizens of the United States; and the security which the collectors were authorized to take was a security only against a hostile employment of the ship by the "owner or owners" thereof, and (in cases within the second section) by "such" owners; that is to say, by owners being American citizens."

On the 20th April, 1818, a further Act of Congress was passed, intituled "An Act in addition to the Act for the punishment of certain crimes against the United States, and to repeal the Acts therein mentioned." By this Act the Acts of 1794, 1797, and 1817, were repealed, and their provisions were revised and consolidated, but without being made more stringent in any material respect. It has never since been repealed, altered, or amended, and continues at the present day a part of the law of the United States.

Notwithstanding the legislation of 1817 and 1818, the Spanish and Portuguese Ministers continued from time to time to complain to the Government of the United States of depredations on Spanish and Portuguese commerce by vessels fitted out and armed in ports of the United States. By the Spanish Minister, writing on the 2nd November, 1817, it was affirmed that "the Act of Congress of the 3rd March, 1817, has in no wise lessened the abuses by which the laws are evaded, and which render entirely illusory the laudable

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purposes for which they were enacted." "From the greater part," he continued, "of the ports of these States there frequently sail a considerable number of vessels, with the premeditated intention of attacking the Spanish commerce, which carry their armament concealed in the hold. It rarely happens that they can be arrested, inasmuch as the Collectors of Customs say that they have not at their disposition the naval force necessary to effect it. On the other hand, armed vessels, under the flag of the insurgents, enter into the ports of the Union, and not only supply themselves with all necessaries, but also considerably increase the means they already have of destroying the trade of Spain, as has recently been the case at New York, whereby the (so-called) privateers of His Majesty's revolted provinces, which are in reality nothing more than pirates, manned by the scum of all countries, enjoy greater privileges than the vessels of independent Powers."

These remonstrances were repeatedly renewed during the year 1818. On the 7th May, 1818, he wrote—

"I would have considered myself dispensed from the necessity of again pressing this subject on your attention, if it had appeared possible for me to restrain these armaments by the employment of judicial means; but, unfortunately, the Act of Congress of the 20th of April last, for preserving neutrality with foreign nations, and others already in force, although highly judicious, are easily eluded; and, although these practices are public and notorious throughout the whole Union, His Majesty's Consuls advise me that through a deficiency of evidence they cannot be restrained by a regular application of the law."

And, on the 9th June, 1818, he represented that there were then at Baltimore four privateers, three of which were notoriously fitted out there, whilst the fourth was a schooner captured from Spanish owners. All these vessels, he affirmed, were commanded by citizens of the United States, and manned, with scarcely an exception, by American crews; but he added that, though these facts were well known, it was in vain to seek evidence to prove them, "as, a great portion of the commercial people of Baltimore being interested in the cases which produce my present reclamations, no one is willing to come forward and offer testimony against what is termed the general interest."

It is needless here to refer particularly to more recent instances of vessels fitted out in ports of the United States for expeditions against countries with which the United States were at peace. These instances are well-known.

In referring to the facts mentioned above it is by no means the intention of Her Majesty's Government to cast any reproach upon the Government or people of the United States. Prohibitory laws directed against offences of this kind are liable to be evaded or infringed without fault on the part of the Government; and they have accordingly been infringed in the United States by acts much more flagrant than any of those now charged against Great Britain. The enforcement of such laws is indeed beset by special difficulties. It is usually difficult to ascertain the existence of an unlawful intention. The class of acts which they prohibit are easy to conceal or disguise; the occasions which call them into operation occur but seldom; and when these occasions arise, it becomes needful either to create a special machinery for the purpose, or to rely upon the officers entrusted with the execution of the ordinary laws of trade and navigation—laws which are framed on the principle of avoiding as much as possible all minute scrutiny and unnecessary interference.

Many cases of alleged violations of the Acts hereinbefore mentioned, have been brought before Courts of the United States, and various parts of them have received from those Courts a judicial interpretation. These interpretations have been, and still are, regarded as authoritative expositions of the law of the United States bearing on this subject.

It results from the foregoing statement—

1. That the law of the United States regarding this matter arose out of the prevalence within the United States of the acts which it was designed to prevent, and that it has been altered and amended in order to prevent more effectually the recurrence of those acts.

2. That it has existed in its present form for more than fifty years; that in the course of that time recourse has frequently been had to it; and that it has always been held, and is now held, by the Legislative authority in the United States to be adequate for its purpose.

3. That, notwithstanding this law, vessels have from time to time been fitted out and armed within the United States, to cruize and commit hostilities against nations with which the United States were at peace, and that severe losses and injuries have been inflicted on those nations by the depredations of such vessels.

Further, it has been constantly held and maintained by the United States (and particularly during the discussions with Spain and Portugal above referred to), that the powers possessed by the Government of the United States to prevent the fitting-out of vessels within the territory of the Republic, were such only as could be shown to be

actually vested in the Government by the laws and constitution of the United States in force for the time being; and that, provided those powers had been *bonâ fide* exercised, the United States were not responsible for any losses, however severe, inflicted by any vessel or vessels, however numerous, fitted and armed within their territories.

It has been the practice of the Executive authorities of the United States, in enforcing the law, to act upon information laid before them by Consuls of foreign Powers, or other persons interested officially or otherwise in preventing the acts prohibited by the law, and to require the persons furnishing such information to produce evidence in support of it; and the importance of such information, to enable the neutral Power to intervene in proper cases, was expressly pointed out in the letter of Mr. Jefferson to Mr. Hammond of the 5th September, 1793, annexed to the Treaty of the 19th November, 1794, between the United States and Great Britain.

Law of Great Britain.

The law of Great Britain on this subject was, at the time of the happening of the events out of which the questions submitted to the Arbitrators arose, embodied in an Act of Parliament passed in the year 1819, and intituled "An Act to Prevent the Enlisting or Engagement of His Majesty's Subjects to serve in Foreign Service, and the Fitting out or Equipping, in His Majesty's Dominions, Vessels for Warlike Purposes without His Majesty's License." This Act is commonly referred to as the "Foreign Enlistment Act." At the time when it was proposed to Parliament, it was reported and believed that expeditions were being prepared in England for the assistance of the Spanish-American Colonies, which were then at war with their mother-country. The circumstances, therefore, which gave rise to the passing of the British law, were similar to those which gave rise to the passing of the corresponding laws in the United States, with the difference that in the United States armed vessels had actually been fitted out, and had actually committed hostilities and depredations against the commerce of a friendly Power, whereas in Great Britain it was only apprehended that some vessels were about to be fitted out and dispatched with a like purpose.

The Legislature of Great Britain, in framing the law of 1819, appears to have adopted as its model the law which had been passed by the Congress of the United States in the preceding year. The British Act is, however, as regards the matters now in question, more stringent, rigorous, and comprehensive than that of the United States.

In regard to the fitting out of vessels for belligerent purposes, the section of the Act of the United States which defines the offence is as follows:—

"SEC. 3. And be it further enacted, That if any person shall, within the limits of the United States, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out, or arming of any ship or vessel with intent that such ship or vessel shall be employed in the service of any foreign Prince or State, or of any colony, district, or people, to cruize or commit hostilities against the subjects, citizens, or property of any foreign Prince or State, or of any colony, district, or people with whom the United States are at peace, or shall issue or deliver a commission within the territory or jurisdiction of the United States, for any ship or vessel, to the intent that she may be employed as aforesaid, every person so offending shall be guilty of a high misdemeanour, and shall be fined not more than 10,000 dollars, and imprisoned not more than three years; and every such ship or vessel, with her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited; one-half to the use of the informer, and the other half to the use of the United States."

The section of the British Act which defines the offence is as follows:—

"VII. And be it further enacted, That if any person within any part of the United Kingdom, or in any part of His Majesty's dominions beyond the seas, shall, without the leave and license of His Majesty for that purpose first had and obtained as aforesaid, equip, furnish, fit out, or arm, or attempt or endeavour to equip, furnish, fit out, or arm, or procure to be equipped, furnished, fitted out, or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming of any ship or vessel with intent or in order that such ship or vessel shall be employed in the service of any foreign Prince, State or Potentate, or of any foreign colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise any powers of government in or over any foreign State, colony, province, or part of any province or people, as a transport or store ship, or with intent to cruize or commit hostilities against any Prince, State, or Potentate, or against the subjects or citizens of any Prince, State, or Potentate, or against the persons exercising or assuming to exercise the powers of government in any colony, province, or part of any province or country, or against the inhabitants of any foreign colony, province, or part of any province or country, with whom His Majesty shall not then be at war; or shall, within the United Kingdom or any of His Majesty's dominions, or in any settlement, colony, territory, island, or place belonging or subject to His Majesty, issue or deliver any commission for any ship or

vessel, to the intent that such ship or vessel shall be employed as aforesaid; every such person so offending shall be deemed guilty of a misdemeanour, and shall, upon conviction thereof, upon any information or indictment, be punished by fine and imprisonment, or either of them, at the discretion of the Court in which such offender shall be convicted; and every such ship or vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores which may belong to or be on board of any such ship or vessel, shall be forfeited; and it shall be lawful for any officer of His Majesty's Customs or Excise, or any officer of His Majesty's Navy, who is by law empowered to make seizures for any forfeiture incurred under any of the laws of Customs or Excise or the laws of trade and navigation, to seize such ships and vessels as aforesaid, and in such places and in such manner in which the officers of His Majesty's Customs or Excise and the officers of His Majesty's Navy are empowered respectively to make seizures under the laws of Customs and Excise or under the laws of trade and navigation; and that every such ship and vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition and stores which may belong to or be on board of such ship or vessel, may be prosecuted and condemned in the like manner and in such Courts as ships or vessels may be prosecuted and condemned for any breach of the laws made for the protection of the revenues of Customs and Excise, or of the laws of trade and navigation.

The 10th and 11th sections of the American Act (which are commonly referred to as the "bonding clauses") were not introduced into the British Act; but, inasmuch as neither of these clauses could have been applied with effect to any of the vessels which sailed from British ports during the war, and the acts of which have given rise to the claims now in question, they may be dismissed from consideration in comparing the two Acts for the purposes of this discussion.

During the forty-two years which elapsed between the passing of the Act of 1819 and the year 1862, only one case founded on an alleged violation of that Act appears to have been brought to trial before a Court. This was a criminal prosecution on a charge of having fitted out in England in the year 1849, during a civil war in the Kingdom of the Two Sicilies, a ship intended for the naval service of persons in arms against the Government of that Kingdom.

It results from the foregoing statements that the law of Great Britain, as it existed at the time of the Civil War in the United States, was such as in the exercise of due foresight might reasonably be deemed adequate for enabling the British Government to perform its obligations as a neutral Government. It was modelled upon the law of the United States, which had long existed and had frequently been brought under consideration in the Courts of that country; it equalled that law and even surpassed it in stringency; and offences against it (if any there were) had been so rare as to have left hardly any trace in the judicial records of Great Britain.

The functionaries to whom the power of seizing vessels for contraventions of the Foreign Enlistment Act was committed by law, were the officers of the Customs stationed at the several ports of the United Kingdom. These officers are under the direction of the Commissioners of Customs resident in London, who are themselves under the general superintendence and control of the Lords Commissioners of the Treasury or Finance Department of Her Majesty's Government.

The police or peace-officers charged with the prevention and detection of crimes and offences in general within the United Kingdom are under the control of the local authorities in the several counties and boroughs under the general supervision of the Secretary of State for the Home Department.

The official advisers of the Government on questions of law are the Attorney-General, the Solicitor-General, and the Queen's Advocate. To these functionaries (whom it is usual to designate collectively as the "Law Officers of the Crown") the Government refers for advice on such questions of law as may arise in the administration of public affairs, and it guides itself by their advice in dealing with such questions.

To the foregoing statement respecting the law of Great Britain so far as it specifically relates to the matters now in question, it is proper to add that, according to the general principles of the constitutional law of the Kingdom—

1. The Executive cannot deprive any person, even temporarily, of the possession or enjoyment of property, nor subject him to bodily restraint, unless by virtue and in exercise of a power created and conferred on the Executive by law.

2. No person can be visited with a forfeiture of property, nor subjected to any penalty, unless for breach of a law, nor unless such breach can be proved to the satisfaction of a competent legal Tribunal, by testimony given on oath in open Court, subject to the rules of procedure established here for the due administration of justice. Every witness is liable to be cross-examined by the accused party or his advocate.

3. No person can be compelled to answer a question put to him in a Court of law if the question is such that, by answering it, he would incur the risk of a penalty or of a prosecution before a criminal Tribunal. Statements on hearsay are not admissible as evidence.

These general principles apply equally, whether the object sought to be attained be the prevention or punishment of an injury to the State, or to any citizen of the State, or to any other person or persons whomsoever.

It may be further observed that during the whole period to which the questions submitted to the Arbitrators relate, every case of alleged infringement of the British Foreign Enlistment Act, brought to trial within the United Kingdom, was required to be proved to the satisfaction of a jury.

Effect of the Blockade.

After these observations on the nature, extent, and limitations of the powers of prevention which by the laws and constitution of Great Britain were vested in Her Majesty's Government, it will be convenient to state the circumstances in the midst of which the Government was called upon to exercise those powers during the war.

It has been mentioned above that one of the first acts of the Government of the United States, after the outbreak of the war, was to set on foot a general blockade of the ports, harbours, and sea-coasts of the Confederate States. These States being hemmed in to the landward on every side, except on the remote southern frontier of Texas, by States which remained faithful to the Union, it was designed by this blockade to cut them off entirely from all traffic and intercourse with neutral countries, especially those from which the people of the South had been accustomed to draw their supplies of manufactured goods, and to which they had been wont to export vast quantities of raw produce. It was not only a commercial blockade on a prodigious scale; it was much more. It was a blockade which, so far as it was successful, shut up and isolated a population of many millions, inhabiting a vast territory and accustomed to export and import largely, from all external commerce whatsoever. At the same time the blockade itself was for a long time very imperfectly maintained, the navy of the United States being quite inadequate for the purpose and needing to be supplemented by vessels of all kinds hastily procured, and the fleet thus composed being distributed along an immense coast-line. These facts are notorious.

It is evident that a blockade of this character offered extraordinary inducements, not only to the people of the Confederate States themselves, but to traders in Europe, to use every effort in order to elude it wherever an opening could be discovered. Accordingly, in the year 1862, an active traffic began to be carried on with some of the blockaded ports; and for the purposes of this traffic it was found profitable to procure or construct vessels of a peculiar class, specially adapted for speed and for protection against the fire of blockading squadrons, and differing in various ways, externally and internally, from ships employed in ordinary trade. Recourse was had, for this purpose, to the ports and building-yards of Great Britain, which are accustomed to supply shipping to purchasers of all countries, and are the principal seat of this kind of industry.

Her Majesty's Government, though aware that the blockade was for a considerable time not completely effective, and though frequently urged to disregard it, both by the Confederate States and by persons desirous of trading with them, refused to do so, and recognized it from first to last. British subjects who attempted to trade with the blockaded ports were warned by Her Majesty's Proclamation (issued at the commencement of the war) that they would incur the risk of the capture and confiscation of their property, and that against that risk their Government would not protect them. On the other hand, the Government neither did nor could—forcibly or by process of law—prohibit its subjects, or persons within its dominions, from engaging in such trade, or from selling, or constructing, or purchasing vessels adapted for that purpose. Such a course, indeed, would have been not only a departure from the ordinary practice and usage of neutral nations, but in conflict with those considerations of general expediency on which the rules of international law are founded. The right of blockade is a belligerent right, and the enforcement of it belongs to the belligerent, and not to neutral Powers. That blockades, to be binding, must be made effective by the blockading Power, is a settled and salutary rule; and this is indeed the sole protection of neutrals against an undue and extravagant extension of the right of blockade. It follows, of necessity, that to the exertions of the blockading Power, and to those alone, the task of making them effective must be left.

Representations of Mr. Adams.

At all the principal sea-ports of Great Britain, the United States maintained Consuls or Consular officers. It was the duty of these officials, in their respective localities, to

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keep a watchful eye on whatever might tend to endanger the security or interests of the United States; to use the utmost diligence in informing themselves of any actual or contemplated violations of law which might prove injurious to those interests; to communicate their information to Mr. Adams, the Minister of the United States in London, and to act on such instructions as they might receive from him in matters within the range of their functions. And it was the duty of Mr. Adams, in all cases which, in his judgment, demanded action or inquiry on the part of the Government of Great Britain, to lay before that Government facts sufficient to call for and justify such action or inquiry. In the course of the years 1861, 1862, 1863, 1864, and 1865, many representations were addressed by Mr. Adams to Her Majesty's Government respecting vessels which he believed to be either actually employed in carrying on trade with blockaded ports in articles contraband of war or other things, or to be preparing for such employment; and also with respect to other vessels which he believed to be intended to be used as privateers or commissioned ships of the Confederate States in cruizing and carrying on war against the United States. To complaints of traffic carried on with blockaded ports, or in articles contraband of war, it was answered, on the part of Her Majesty's Government, that these were enterprises which Her Majesty's Government could not undertake to prevent, and the repression of which belonged to the United States as a belligerent Power. Allegations, on the other hand, that vessels were being prepared for cruizing or carrying on war were immediately referred to the proper officers of the Government at the several localities for careful investigation and inquiry. If, on such investigation, it appeared by sufficient *primâ facie* evidence that any illegal act was being or had been committed, the vessels were forthwith seized, and proceedings instituted according to law; if not, the result was at once communicated to Mr. Adams, and directions were given to the local authorities to watch closely the vessels as to which his suspicions had been aroused.

The Bermuda.

The first of these cases was that of the steam-ship Bermuda. On the 15th August, 1861, Earl Russell received from Mr. Adams the following note:—*

Mr. Adams to Earl Russell.

"My Lord, "*Legation of the United States, London, August* 15, 1861.

"From information furnished from sources which appear to me entitled to credit, I feel it my duty to apprise Her Majesty's Government that a violation of the Act prohibiting the fitting out of vessels for warlike purposes is on the point of being committed in one of the ports of Great Britain, whereby an armed steamer is believed to be about to be dispatched with the view of making war against the people of the United States.

"It is stated to me that a new screw-steamer, called the Bermuda, ostensibly owned by the commercial house of Fraser, Trenholm, and Company, of Liverpool, well known to consist in part of Americans in sympathy with the insurgents in the United States, is now lying at West Hartlepool ready for sea. She is stated to carry English colours, but to be commanded by a Frenchman. She is two-masted, brig-rigged, lower part of funnel black and upper part red, black hull, with a narrow red stripe round the moulding level with the deck, no poop, wheel-house painted white, six white boats slung in iron davits. She has neither figure-head nor bowsprit. Her bottom is painted pink up to the water-line.

"This steamer is armed with four guns, and she has been for some time taking in crates, cases, and barrels believed to contain arms and ammunition of all kinds ordinarily used in carrying on war.

"This cargo is nominally entered as destined to Havana in the Island of Cuba, but her armament and cargo are of such a nature as to render it morally certain that the merchants who claim to be the owners can have no intention of dispatching her on any errand of mercy or of peace.

"I am informed that this vessel will sail in a day or two; I therefore feel under the highest obligation to submit the information I have obtained as the ground for an application for a prompt and effective investigation of the truth of the allegations whilst there is time. Not doubting the earnest disposition of Her Majesty's Government faithfully to adhere to the principles of neutrality to which it has pledged itself, I ask, on the part of the United States, for no more than a simple enforcement of the law, in case it shall appear that evil-minded persons are seeking to set it at naught.

"I pray, &c.

(Signed) "CHARLES FRANCIS ADAMS."

On the same 15th August, Earl Russell informed Mr. Adams (as the fact was), that he had lost no time in communicating on the subject with the proper Department of the Government. Inquiries were immediately directed to be made on the spot, and it was found, as the result of such inquiries, that there was no reason to believe that the vessel

* Appendix, vol. ii, p. 133

was intended for warlike use. Earl Russell, on the 22nd August, 1861, wrote to Mr. Adams as follows:—

*Earl Russell to Mr. Adams.**

"Sir, "*Foreign Office, August* 22, 1861.

"I acquainted you in my letter of the 15th instant that I had lost no time in communicating with the proper Department of Her Majesty's Government respecting the steam-vessel fitting out at Hartlepool, which you believed was about to be dispatched with a view of making war against the people of the United States.

"I have now the honour to state to you that the result of the inquiries into this case having been submitted to the proper Law Officer of the Crown, Her Majesty's Government have been advised that there is not sufficient evidence to warrant any interference with the clearance or the sailing of the vessel.

"The 7th section of the Foreign Enlistment Act, 59 Geo. III, cap. 69, applies to the equipment of a vessel for the purpose of being employed in the service of a foreign State as a transport or cruizer, but has no reference to the mere nature of the cargo on board, and there is at present no proved intention that the vessel itself is to be employed for a warlike purpose.

"The persons engaged in the venture must take the consequences which, according to the law of nations, may happen to ensue during transit, owing to a portion of the cargo loaded by them being contraband of war.

"I am, &c.
(Signed) "RUSSELL."

The Bermuda was doubtless intended for blockade-running, for which purpose alone she was employed. She sailed from Liverpool with cargo for Savannah, and succeeded in entering that port and returning thence to Liverpool. On her second voyage she was captured by a United States' ship, and was condemned as prize.

The vessels to which Mr. Adams next called the attention of Her Majesty's Government were the Oreto or Florida and the Alabama, originally known as "No. 290." The facts which are within the knowledge of Her Britannic Majesty's Government, relating to the preparation, departure, and subsequent history of these two vessels, are fully stated in Parts V and VI of this Case.

The Hector.

In November 1862, Mr. Adams made inquiry of Earl Russell respecting a vessel then in course of construction at Glasgow, which subsequently became Her Majesty's ship Hector. He was informed in answer (as the fact was) that the vessel was being built for Her Majesty's Government.†

The Georgiana.

The next case was that of the Georgiana..

On the 17th January, 1863, Earl Russell received from Mr. Adams the subjoined Note and inclosure:—

Mr. Adams to Earl Russell.‡

"My Lord, "*Legation of the United States, London, January* 16, 1863.

"It has become my painful duty to call your Lordship's attention to one more of the cases in which the neutral territory of Great Britain is abused by evil-disposed persons for the worst of purposes, in the present war. I have the honour to transmit a copy of a letter addressed to me by the Consul of the United States at London, giving the particulars based upon credible information received by him, the authority for which it is not in his power at present to disclose. As the vessel is known to be on the eve of departure from the port of Liverpool, I fear I have not the time necessary to procure corroborative evidence from that place. Under these circumstances I feel myself impelled to make this representation without further delay. I have reason to believe that the vessel in question is intended to pursue a similar course with that formerly called No. 290, to wit, the destruction of the commerce of the United States. I therefore solicit the interposition of Her Majesty's Government, at least so far as to enable me to procure further evidence to establish the proof of the allegations here made, in season for the prevention of this nefarious enterprise.

"Praying, &c.
(Signed) "CHARLES FRANCIS ADAMS."

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* Appendix, vol. ii, p. 138. † Ibid., p. 143. ‡ Ibid., p. 144.

Part III.

Introductory statement.

(Inclosure.)

Mr. Morse to Mr. Adams.

"Sir, "*Consulate of the United States, London, January* 16, 1863.

"I have information, on evidence which secures my belief, that the iron screw-steamer Georgiana, Captain Davidson, now in Sandon Graving Dock, Liverpool, is intended for a Confederate privateer, and is now fitting for the business of privateering. She was built in the yard of Mr. Laurie, at Glasgow. Mr. George Wigg, of New Orleans, contracted to have her built. She is now, I presume, but temporarily (for security, until she gets off) registered in the name of Niel Mathieson, Secretary of the Confederate Aid Association at Glasgow. She is so constructed that armour plating could be put on to her at any time after leaving the port where she was constructed.

"She is a well-built, fast vessel, rigged for fore and aft sails, and is over 400 tons, net measurement. She left Glasgow for Liverpool on the 3rd of the present month, and is now at the last-named port preparing for sea. She has port-holes cut for four rifled cannon, and bolts, &c., arranged for them, since she left Glasgow; and also a portion of her armour plating put on, and small-arms enough for a crew of privateersmen. She will take some forty or fifty men, all told, from Liverpool, and make up a full crew after leaving. Among those now engaged is a gunner, once a serjeant in the Royal Artillery. She is advertised for Nassau, and will pretend to go out as a regular trader.

"I regret that I am unable to sustain the above statement by the affidavits of my informants, but I am bound in honour not to use their names. My information concerning this steamer, for the last five or six weeks, confirms the accuracy of the statement, and I have full confidence in its truth.

"The Georgiana will call at Queenstown for coal.

"Your obedient Servant,
(Signed) "F. H. Morse, *Consul.*"

Immediately on receiving the said Note and inclosure, Earl Russell sent copies of them to the proper Departments of the Executive Government, with a request that instant inquiry might be made; and on the same 17th January, 1863, he wrote to Mr. Adams as follows:—*

Earl Russell to Mr. Adams.

"Sir, "*Foreign Office, January* 17, 1863.

"I have the honour to acknowledge the receipt this day of your letter of the 16th instant, inclosing a letter from the United States' Consul in London, giving the particulars based upon credible information received by him, the authority for which it is not in his power at present to disclose, respecting an iron screw steamer named the Georgiana, Captain Davidson, now lying in the Sandon Graving Dock, at Liverpool, which he believes to be intended for a Confederate privateer, and to be now fitting out for the business of privateering.

"I have communicated copies of your letter and of its inclosure to the Board of Treasury, and to the Secretary of State for the Home Department, without delay; and I have requested that orders might be sent by telegraph to the proper authorities at Liverpool, enjoining them to take such steps in the matter as may legally be taken.

"I think it right, however, to observe that Her Majesty's Government cannot be answerable for any difficulty which may be experienced in carrying out those orders, in consequence of the evidence on which the statement of the United States' Consul is made being withheld from them.

"I have, &c.
(Signed) "Russell."

A telegraphic despatch directing an immediate investigation was on the same day sent to Mr. Price Edwards, the Collector of Customs at Liverpool.

The vessel and her papers were examined accordingly, and, on the following day (Sunday), the Collector reported by telegraph the results of such examination as follows:—†

"Georgiana, British, 407 tons register; brig rig; cargo, merchandise, provisions, and drugs; no guns on deck; no fitting for guns on board; one cwt. powder; iron bulwarks; no port-holes for guns; no fittings for guns on board; a fast vessel; forty, crew; not fitted as a privateer; better adapted for running the blockade; cleared out for Nassau; now in the Mersey, and is intended to leave to-day, say 4 P.M.

"*Sunday, January* 18."

Detailed reports of the examination were subsequently made by the officers employed for the purpose, and were as follows:—‡

Report of the Surveyor of Customs, Liverpool, to the Collector of Customs, Liverpool.

"Sir, "*Sunday, January* 18, 1863.

"Last night, about ten o'clock, I received the telegram sent to you relative to the Georgiana, but, being too late, I had no alternative but to wait till this morning early, when I went in search of the vessel, and found that she had hauled into the river on Saturday.

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* Appendix, vol. ii, p. 148. † Ibid., p. 149 ‡ Ibid. p. 151.

"I gave directions to the Acting Assistant Surveyor, Mr. Webb, to accompany me to her, but, as we were going, I met the master of her (Davidson), who informed me that all the ship's papers were ashore.

"I then accompanied the master, while Webb went to the vessel. On my inspecting the papers, I found nothing to induce the suspicion that she was intended for privateering. She had a great many bills of lading, in which the goods (cargo) were consigned to parties at Nassau.

"Amongst other things, there were a great many packages of drugs, which convinced me that they were intended to run through the blockade.

"I also saw the ship's articles, upon which the names of all the crew stood. The amounts set against their respective names, forty in number, were not higher rates of wages than usual; and his charter-party was in the usual style, and destined him to Nassau, Havana, or New Orleans.

"On the return of the officer from the ship, he stated that she had no port-holes, no guns, and no fittings for guns on deck, and nothing to denote that she was intended for a privateer.

"Under these circumstances I am respectfully of opinion that she is in no way subject to detention.

"Very respectfully, &c.

(Signed) "C. MORGAN, *Surveyor*

"The Collector."

*Declaration of the Acting Assistant Surveyor of Customs, Liverpool.**

"I have been in the service of the customs nearly twenty-seven years. I entered the service as a tide-waiter. Yesterday morning (Sunday) the surveyor, Mr. Morgan, called at my house (for it was my turn off duty) about 7·30, and asked me if I knew where the Georgiana was lying. I told him she had gone into the river on Saturday, and was then lying in the Mersey, opposite the watch-house. I then accompanied him towards the boarding station at the Prince's Dock Pier-head. As we were going down we met the captain, Davidson. He said he was going to the ship. Mr. Morgan then desired me to go to the ship in the river, while he turned back with the captain to see his papers. I went on board the Georgiana at about 9.30 A.M. She was about half a mile off the great landing-stage. I went on board and had the hatches removed in order to examine the cargo. She was not above half full. She appeared to have a quantity of tea and bale goods on board; also, oil, tallow, and provisions, which I saw. There was no objection made to my going into any part of the vessel. I have seen the vessel several times before, both while she lay in the Sandon docks and in the graving-dock. She is an ordinary iron screw-steamer, *i.e.*, not built stronger than the ordinary merchant-vessel. She is brig-rigged, and not fore and aft. She has no port-holes, and no places fitted for mounting guns. It is impossible that she could have port-holes without a total change in the bulwarks, there being no support to sustain the recoil of the guns. There were eighteen or nineteen iron plates on board, lying on the top of the cargo; they were of the same thickness as the hull of the vessel—that is, the ordinary thickness for merchant-vessels.

"I am satisfied, from the construction, general fitting, and adaptations of the ship, that she is in no way fitted for a privateer. I specially noticed the vessel after she came to the port, and on her arrival made several inquiries about her, and so satisfied was I then, and still am, that she was not intended for warlike purposes, that I did not consider myself called upon to make any report concerning her.

(Signed) "J. WEBB."

"Signed and declared before me, at the Custom-house, Liverpool, this 19th day of January, 1863.

(Signed) "S. PRICE EDWARDS, *Collector.*"

A letter was also sent by the Secretary of State for the Home Department to the Mayor of Liverpool, requesting that inquiry should be made by the police respecting the vessel. Inquiry thus made confirmed the reports of the officers of Customs, that she was not fitted or intended for war. She was a vessel constructed with a view to speed for the purpose of running the blockade, slightly and hastily built. Two port-holes had been pierced in her on each side; these, it was stated, might be used to enable her to carry guns for her own protection, as many merchant-vessels do, but were intended (as the shipbuilder's foreman, who superintended the piercing of them believed), chiefly for the escape of water, of which, from her great speed, she would ship large quantities in a heavy sea.†

All the information thus obtained was transmitted at once to Mr. Adams.

The Georgiana sailed from Liverpool on the 21st January, 1863, with a general cargo for Nassau, and thence for Charleston, as a blockade-runner. In attempting to enter Charleston harbour, she was chased and fired upon by the blockading vessels, and was run aground and wrecked.‡

The Phantom.

On the 27th March, 1863, Earl Russell received from Mr. Adams the subjoined Note and inclosure:—§

Mr. Adams to Earl Russell.

"My Lord, "*Legation of the United States, London, March* 26, 1863.

"I have the honour to transmit, for your information, the copy of an extract of a letter received by me from Mr. Dudley, the Consul at Liverpool, giving some particulars of hostile outfits making

* Appendix, vol. ii, p. 152. † Ibid., pp. 154, 155, 156. ‡ Ibid., p. 160. § Ibid., p. 167.

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at that place. It is proper to add, in correction of a statement therein contained, that Mr. Dudley has to day informed me that the Southerner has not yet reached Liverpool. There is little doubt, however, of its ultimate destination.

"I pray, &c.
(Signed) "CHARLES FRANCIS ADAMS."

(Inclosure.)

Mr. Dudley to Mr. Adams.

"Sir, "*United States' Consulate, Liverpool, March* 24, 1863.

"On Saturday last Mr. William C. Miller and Son launched from their yard, in Liverpool, an iron screw-steamer, called the Phantom, built for Fraser, Trenholm, and Co. This vessel is large and to have great speed. The contract is not less than seventeen nautical miles per hour. Her engines are being made by Fawcett, Preston, and Co. She has three port-holes on each side. Captain Bullock, Captain Tessier, Mr. Prioleau, the leading members of the firm of Fraser, Trenholm, and Co., Mr. Thomas of the firm of Fawcett, Preston, and Co., and others were present at the launch. She is intended for the South, either as a privateer or blockade-runner: there is no doubt about this, I think. She will turn up a privateer. Her draught of water will be light, and with her powerful engines her speed will be very fast. When afloat she will be a most dangerous craft to our commerce, if armed with two or three guns.

"I have on several occasions referred to the steamer built at Stockton for Fraser, Trenholm, and Co., called the Southerner. This vessel came here yesterday either to coal or else to fit out as a privateer. There is no doubt about this vessel. I suppose it will be impossible for me to obtain legal evidence against these two vessels, and nothing short of this will satisfy this Government.

"I am, &c.
(Signed) "THOMAS H. DUDLEY."

The receipt of this Note was immediately acknowledged by Earl Russell, and Mr. Adams was informed that the proper Departments of Her Majesty's Government would be requested to make immediate inquiries on the subject.

On the same 27th March, 1863, Earl Russell sent copies of the said Note and inclosure to the proper Departments, with a request that instant inquiry should be made, and on the following day he wrote to Mr. Adams as follows:—*

Earl Russell to Mr. Adams.

"Sir, "*Foreign Office, March* 28, 1863.

"With reference to my letter of yesterday's date, I have the honour to inform you that I have received from the Home Office a copy of a letter which has been addressed to the Mayor of Liverpool respecting the two vessels Phantom and Southerner, stated by the United States' Consul at that port to be fitting out for the service of the so-styled Confederate States.

"In that letter the Mayor of Liverpool is instructed to make immediate inquiries as to these vessels, or whichever of them is now at Liverpool, and to ascertain whether there is any reason to believe that they or either of them are or is being equipped, furnished, fitted out, or armed with the intent to commit hostilities against the United States' Government; and if so, to report whether any evidence on oath can be procured in order to proceedings being taken under the Foreign Enlistment Act.

"I have accordingly the honour to suggest that, as the United States' Consul at Liverpool has stated in his letter to you that there is no doubt with respect to the vessel named the Southerner, you should instruct that officer to furnish the Mayor of Liverpool with the information on which his belief is founded.

"I have, &c.
(Signed) "RUSSELL."

The officers of Customs at Liverpool made prompt and careful inquiry into the matters alleged by Mr. Adams, and inquiry was also made under the direction of the Mayor of Liverpool, and the result of such inquiries was, on the 3rd April, 1863, communicated by Earl Russell to Mr. Adams in the following Note:—†

Earl Russell to Mr. Adams.

"Sir, "*Foreign Office, April* 3, 1863.

"Since the date of my letter of the 27th ultimo, I have received from the Board of the Treasury a Report made by the Commissioners of Customs, under date of the 31st ultimo, and from the Secretary of State for the Home Department a Report from the Mayor of Liverpool, bearing the same date containing the result of inquiries made by them in regard to the vessels Phantom and Southerner, denounced by you in your letter of the 26th ultimo as intended for the naval service of the so-called Confederate States.

"It appears from the first of these reports that the Phantom was built at the yard of Mr. W. C. Miller, and is now in the Clarence graving dock. Her length is 193 feet; her breadth, 22 feet; her depth, 12 feet; her gross tonnage, 321; and her probable register tonnage, 160.

"From the considerable space appropriated to her engines, and from her model, there seems to be no doubt a high rate of speed will be obtained; and from her light draught of water she is well adapted

* Appendix, vol. ii, p. 168.

† Ibid., p. 170.

for running the blockade; but as she has steel plates only half an inch thick, and as the angle irons which compose the deck beams are only five by three and half inches thick, and as, moreover, she has no ports except for water-way (three in all), and a hurricane-house on deck, the surveyor of Customs considers that she is not intended to carry guns, and that she is not fit for a privateer.

"The Mayor of Liverpool reports that the Phantom was launched on the 21st of March from the yard of Messrs. Miller and Co., and that her engines are being made and fitted by Messrs. Fawcett, Preston, and Co., of Liverpool; that she is in an unfinished state, and not expected to proceed to sea under a fortnight or three weeks. No distinct information could be obtained as to what she is intended for, but a strong impression exists that she is destined for the purpose of running the blockade.

"The Southerner has not yet arrived at Liverpool.

"A strict watch will be kept as regards both vessels.

"I have, &c.
(Signed) "RUSSELL."

On the 7th April, 1863, Earl Russell received from Mr. Adams the following Note:—*

Mr. Adams to Earl Russell.

"My Lord, "*Legation of the United States, London, April* 6, 1863.

"I have the honour to acknowledge the reception of notes from your Lordship, dated the 27th and 31st of March, and two on the 3rd of April, in reply to certain representations of mine concerning vessels believed to be in preparation at Liverpool, for the carrying on of hostilities at sea, against the commerce of the United States. It is a source of great satisfaction to me to recognize the readiness which Her Majesty's Government has thus manifested to make the investigations desired, as well as to receive the assurances of its determination to maintain a close observation of future movements of an unusual character, that justify suspicions of any evil intent.

"I pray, &c.
(Signed) "CHARLES FRANCIS ADAMS."

Mr. Adams subsequently (viz., on the 16th, 19th, and 23rd May, 1863)† sent to Earl Russell copies of several sworn depositions made by a detective police officer at Liverpool who had been employed to watch the ship-building yards, and by other persons. These depositions tended to show that the building and fitting of the Phantom was superintended by persons in the employ of Messrs. Fawcett, Preston, and Co., a firm of ironfounders and engineers carrying on a very extensive business at Liverpool (a member of which firm was the registered owner of the vessel). It also appeared from the depositions that a Captain Bullock (to whom reference will be made hereafter) took part in superintending the work; and it was further sworn by two of the deponents (who were police-constables) that the vessel was entirely cased in steel-plates; that she had three port-holes on each side, with steel-plate shutters; that she had very little room for cargo; and that she appeared to them to be built for war purposes.

Immediately on the receipt of these depositions, further inquiries were directed by Her Majesty's Government, and were prosecuted accordingly, and the result of them was, on the 27th May, 1863, communicated by Earl Russell to Mr. Adams in the following Note:—‡

Earl Russell to Mr. Adams.

"Sir, "*Foreign Office, May* 27, 1863.

"I had the honour, in my note of the 3rd ultimo, to communicate to you the result of the inquiries which had been instituted by Her Majesty's Government, on the receipt of your letter of the 26th of March, in which you denounced the Phantom steamer as being in course of construction at Liverpool as a vessel of war for the service of the so-styled Confederate States.

"The evidence which I was then able to lay before you seemed to show that you had been misinformed in this respect; but as the depositions inclosed in your letters of the 16th, 19th, and 23rd instant appeared to call for further inquiry, Her Majesty's Government did not lose a moment in causing such further inquiry to be made, and I now proceed to communicate to you the result.

"1st. With regard to the allegation that the Phantom has port-holes, the Collector at Liverpool has obtained from the Surveyor a report, from which it appears that, though the Phantom has ports on deck, it is evident from their size and situation that they are intended for the escape of water, and not for guns, which the strength of the deck is not sufficient to carry; moreover, the permanent fittings on deck would interfere with the working of guns. The Surveyor adds that, in his opinion, the Phantom is intended for mercantile pursuits, but whether of a lawful character or for running the blockade there is no evidence to show.

"2ndly. The Commissioners of Customs, since the date of my last letter, have caused a strict watch to be kept upon the Phantom, but nothing has transpired worthy of special notice, and the several papers in regard to this vessel, including the depositions forwarded by you, having been submitted to the legal adviser of that Board, he has reported that there is no evidence to warrant the slightest interference with her. Indeed it is stated that during a recent interview between that officer and Mr. Squarey, the Solicitor to the United States' Consul at Liverpool, Mr. Squarey admitted

* Appendix, vol. ii, p. 171. † Ibid., pp. 171, 173, and 176. ‡ Ibid., p. 177.

that there was no case against the Phantom, and that the recoil of a heavy gun would shake her to pieces.

"I have, &c.
(Signed) "RUSSELL."

In a subsequent Note to Mr. Adams, dated 30th May, 1863, referring to the same subject, Earl Russell wrote as follows :—*

"The Surveyor further observes that it is difficult for any one at all familiar with the construction and fittings of vessels intended for warlike purposes to account for the supposition that the Phantom is destined for such a service, her hull being of the most fragile character that can be conceived for a sea-going vessel, her steel plates being but a quarter of an inch thick, and her iron frame of the same proportion."

The Phantom sailed on the 10th June, 1863, from Liverpool for Nassau, and is believed to have been employed as a blockade-runner. She was never used for war.

The Southerner.

On the 3rd June, 1863, Mr. Adams addressed to Earl Russell the following note respecting a vessel called the Southerner, alleged to be fitting out at Stockton-on-Tees :—†

Mr. Adams to Earl Russell.

"My Lord, "*Legation of the United States, London, June* 3, 1863.

"I have the honour to submit to your consideration copies of two depositions relating to a vessel which has been fitting out at Stockton-on-Tees, for some purpose not usual in times of peace. This vessel is called the Southerner, and is the same to which I called your Lordship's attention in my note of the 26th of March last. I think it can scarcely admit of a doubt that she is intended to carry on the same piratical mode of warfare against the commerce of the United States now practised by the so-called Alabama and the Oreto. The person superintending her equipment appears to be the same who was equally active in the case of No. 290. I therefore feel it is my duty to call your Lordship's attention to the case, in order that the proper measures may be taken in season to prevent any evil consequences to the peace of the two countries from the escape of such a vessel.

"I pray, &c.
(Signed) "CHARLES FRANCIS ADAMS."

In this note were inclosed two depositions, sworn by persons who had inspected the vessel. These depositions, however, furnished no evidence that she was in any way fitted or intended for war. It appeared that she had two small guns mounted on her decks; but these were afterwards described by Mr. Dudley himself as "small guns, such as are usually found in passenger vessels of her size."

In answer to Mr. Adams's Note, Earl Russell, on the 4th June, 1863, wrote to Mr. Adams as follows :—‡

Earl Russell to Mr. Adams.

"Sir, "*Foreign Office, June* 4, 1863.

"Your letter of yesterday respecting the Southerner was unfortunately not delivered at the Foreign Office till 8·50 P.M., some time after the business of the day was ended and the office closed.

"I have, at the earliest possible hour this morning, communicated with the Treasury and Home Department, and I have requested that orders may at once be sent by telegraph to the proper authorities, to pay immediate attention to the circumstances set forth in your letter.

"I have, &c.
(Signed) "RUSSELL."

Orders were forthwith sent accordingly, and the Collectors of Customs at Stockton and Middlesborough-on-Tees, at West Hartlepool, and Liverpool respectively, were instructed by telegraph to watch the vessel, to report any suspicious circumstance, and, should there be any legal proof of a violation of the Foreign Enlistment Act, to delay her, or, if necessary, detain her for the directions of the Board of Customs.

The Collector of Customs at Stockton, on the same day (4th June, 1863), reported concerning the Southerner as follows :—§

"She appears to me to be calculated for neither running nor fighting, but is certainly a very superior merchant-ship, built, I should say, expressly for carrying bales of cotton. The owners appear to me to have calculated, when they contracted about twelve months ago for building her, that the stock of cotton in America would have been from some cause or other released ere now. And, as

* Appendix, vol. ii, p. 179. † Ibid., p. 187. ‡ Ibid., p. 190. § Ibid., p. 193.

freights upon the article would have ruled high for fast vessels, they doubtless expected to reap great profits. For the present, however, they would seem to have been disappointed. And I understand that a sister ship built in the Tyne for the same parties, has, for want of more profitable employment, been sent to Alexandria on some miserably low freight."

This report was confirmed by the Collector and the Surveyor of Customs at West Hartlepool and the Acting Surveyor of Customs at Liverpool. These officers reported that she appeared to be intended for commercial purposes; that her ports were far too small for working guns, and were designed for letting away water; and that the two guns on board of her were ordinary signal-guns, mounted on carriages such as are generally used by merchant-vessels of her class, and were, as so mounted, merely fit for firing signals with blank cartridge.*

On the 12th June, 1863, Earl Russell wrote as follows:—†

Earl Russell to Mr. Adams.

"Sir, "*Foreign Office, June* 12, 1863.

"At the same time that I communicated to the Lords of the Treasury and to the Secretary of State for the Home Department, as I informed you in my letter of the 4th instant, the statements respecting the Southerner contained in your letter of the 3rd instant, I submitted those statements also to the consideration of the Law Advisers of the Crown; and I have since learned from them that, in their opinion, the evidence supplied by those statements would not support a charge against the vessel that she is so equipped, or fitted out, or destined, as to constitute a breach of the provisions of the Foreign Enlistment Act, and that it consequently did not afford sufficient warrant for arresting the vessel.

"The greater portion of the two depositions inclosed in your letter consists of hearsay matter, or statements of mere belief, which, according to American equally with British law, are inadmissible in a Court of justice, and upon which Her Majesty's Government could not legally proceed.

"Attention will, nevertheless, continue to be paid to the vessel, with a view of guarding, as far as possible, against her being equipped in this country in a manner inconsistent with the provisions of the Foreign Enlistment Act.

"I have, &c.
(Signed) "RUSSELL."

On the 3rd July, 1863, he again wrote as follows:—‡

Earl Russell to Mr. Adams.

"Sir, "*Foreign Office, July* 3, 1863.

"I had the honour, on the 12th of June, to communicate to you the result of the inquiries which had up to that time been instituted by Her Majesty's Government with reference to the statements respecting the vessel Southerner, contained in your letter of the 3rd of that month. I however added that attention should nevertheless continue to be paid to that vessel, with the view of guarding, as far as possible, against her being equipped in this country in a manner inconsistent with the provisions of the Foreign Enlistment Act.

"I have now to inform you, in fulfilment of that assurance, that Her Majesty's Government considered it desirable to request the Board of Admiralty to associate with the Custom-house Surveyor at Liverpool an officer well acquainted with the build and equipment of vessels of war, with instructions to survey the Southerner, and to report the result to Her Majesty's Government.

"That officer's Report has now been received, and I have the honour to acquaint you that it appears from it that the Southerner is an ordinary built iron screw steam passenger and cargo vessel of 1,569 tons, fitted with engines of 300 horse-power; that she is also fitted with top-gallant, forecastle, and poop-deck, with deck-house continuous fore and aft with the same, in the same manner as the Inman line of screw-boats sailing between Liverpool and New York; that she is fitted up aft, under the poop-deck, with cabin accommodation for about sixty-six saloon passengers; the forecastle for the crew, and deck-houses for the ship's officers; that her holds are appropriated for the reception of cargo, and that she is fitted with steam winches for working the same.

"The Admiralty Surveyor further reports that he finds, upon examination, that her top sides are of iron plates three-eighths of an inch thick, and are in no way fitted or secured for the working of guns; and that she has two gangways fitted, one on each side amidships, for the purpose of working her cargo.

"The Surveyor, in conclusion, says that upon fully examining the Southerner he cannot find anything, with regard to construction or fittings, that would lead him to suppose that she was intended for belligerent purposes.

"I have, &c.
(Signed) "RUSSELL."

On the 9th August, 1863, the Southerner sailed from Liverpool, with a clearance for Alexandria, *viâ* Cardiff. She proceeded to Alexandria, and was employed in the Mediterranean in the conveyance of cotton and of passengers, and was never used for war.§

* Appendix, vol. ii, pp. 201 and 207. † Ibid., p. 203. ‡ Ibid., p. 208. § Ibid., p. 209.

Part III.

Introductory statement.

The Alexandra.

On the 28th March, 1863, application was made by Mr. Dudley to the Collector of Customs at Liverpool, for the seizure of a vessel stated to be lying in one of the docks in the port of Liverpool, and called the Alexandra.* Mr. Dudley at the same time laid before the Collector six sworn depositions, one made by himself, and the others by various other persons, tending to show that she was constructed for warlike use, and that she was intended for the service of the Confederate States.

Copies of the depositions were, on the 31st March, received by Earl Russell from Mr. Adams, together with a Note, in which Mr. Adams stated that he would remit no exertion to place in the hands of Her Majesty's Government all the information that could be obtained. The receipt of this Note was on the same day acknowledged by Earl Russell, and instructions were immediately given that whatever measures could legally be taken in view of the *facts* thus brought to the knowledge of Her Majesty's Government should be adopted.† The depositions were at the same time laid before the Law Officers of the Crown, in order that they might advise the Government thereon.

On the 3rd April, 1863, Earl Russell further wrote to Mr. Adams, as follows:—‡

Earl Russell to Mr. Adams.

"Sir, "*Foreign Office, April* 3, 1863.

"With reference to my letter of the 31st ultimo, I have the honour to inform you that the Secretary of State for the Home Department has instructed the Mayor of Liverpool to cause immediate inquiries to be made with the view of ascertaining whether the Alexandra, denounced by you in your letter of the 30th ultimo, is being equipped, furnished, fitted out, or armed, with the intention of her being employed in the service of the so-called Confederate States, with intent to commit hostilities against the Federal Government of the United States; and if this should appear to be the case, the Mayor is further instructed to adopt whatever steps can legally be taken in the matter.

"I have, &c.

(Signed) "RUSSELL."

On the 5th April, 1863, the Alexandra was, pursuant to the direction of Her Majesty's Government, seized by the officers of the Customs at Liverpool, under the powers created by the 7th Section of the Foreign Enlistment Act;§ and proceedings were soon afterwards instituted in the Court of Exchequer by the Attorney-General on behalf of the Crown, in order to obtain a condemnation of the ship under the provisions of that Act.

Mr. Adams was informed that orders to seize the vessel had been given, and he, on the 6th April, 1863, wrote to Earl Russell as follows:—‖

Mr. Adams to Earl Russell.

"My Lord, "*Legation of the United States, London, April* 6, 1863.

"I have the honour to acknowledge the reception of your Lordship's note of the 5th instant, in answer to mine of the 30th ultimo, making certain representations in regard to the character of a vessel in Liverpool known as the Alexandra. It is with the most lively satisfaction that I learn the decision of Her Majesty's Government to detain that vessel. Believing that such an act, at the present moment, is calculated to defeat the sanguine hopes of the common enemies of both nations, to sow the seeds of dissension between them, I shall remit no effort to procure all the information possible to support it. To that end I have, agreeably to your Lordship's suggestion, sent the necessary instructions to the Consul of the United States at Liverpool to put himself in communication with the authorities designated at that place to pursue the subject.

"I pray, &c

(Signed) "CHARLES FRANCIS ADAMS."

On the 22nd June, 1863, the cause came on for trial in the Court of Exchequer before the Lord Chief Baron (the Chief Judge of that Court) and a Special Jury; the Attorney-General, the Solicitor-General, and the Queen's Advocate, with two other members of the Bar, conducting the case for the Crown. The trial occupied three days. At the close of the third day the jury returned a verdict against the Crown and in favour of the persons claiming to be owners of the ship.¶ Application was thereupon made on behalf of the Crown to the four judges of the Court of Exchequer sitting as a collective Court, to obtain a new trial of the cause, on the grounds, first, that the instructions which had been delivered by the Lord Chief Baron to the jury as to the intent and interpretation of the law were erroneous; and, secondly, that the verdict was contrary to the weight of

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* Appendix, vol. ii, p. 222. † Ibid., p. 227. ‡ Ibid., p. 229. § Ibid., p. 232.
‖ Ibid., p. 231. ¶ Appendix, vol. iii, p. 56.

testimony. After long argument, the hearing being continued during six days, this application failed, the four Judges composing the Court being equally divided in opinion, and judgment was given against the Crown.* All the Judges pronounced their opinions *seriatim* in open Court. From this judgment an appeal was made on behalf of the Crown to another tribunal (the Exchequer Chamber) composed of all the Judges of the Superior Courts of Common Law sitting collectively; but it was adjudged, after argument, that the jurisdiction assigned by law to this tribunal did not authorize it to entertain the appeal.

Costs and damages amounting to 3,700*l.* were paid by the Crown, as the defeated party, to the claimants of the ship.

Whilst these proceedings were pending, and after the verdict of the jury had been delivered, Mr. Seward addressed to Mr. Adams a despatch, dated the 11th July, 1863, which contained the following instructions in regard to the case of the Alexandra:—

"1st. You are authorized and expected to assure Earl Russell that this Government is entirely satisfied that Her Majesty's Government have conducted the proceedings in that case with perfect good faith and honour, and that they are well disposed to prevent the fitting out of armed vessels in British ports to depredate upon American commerce and to make war against the United States.

"2ndly. This Government is satisfied that the Law Officers of the Crown have performed their duties in regard to the case of the Alexandra with a sincere conviction of the adequacy of the law of Great Britain, and a sincere desire to give it effect.

"3rdly. The Government of the United States does not descend to inquire whether the jury in the case were or were not impartial. It willingly believes they were so, and it accepts the statement made with so much unanimity by all the reporters of the case, that the judge who presided at the trial made the bench responsible for the verdict by the boldness and directness of his rulings against the prosecution.

"4thly. Great Britain being a free and constitutional country, and the proceedings in the case of the Alexandra having been thus far conducted by the Government in good faith and according to law, the United States would not be justified in deeming the verdict rendered by the jury a cause of national complaint, provided that the Government prosecutes an appeal to the higher Courts until it be determined in the Court of last resort whether the law is adequate to the maintenance of the neutrality which Her Majesty has proclaimed, and provided also that in the meantime the Alexandra and other vessels that may be found violating or preparing to violate the law be prevented, so far as the law may allow, from leaving British ports to prosecute their work of devastation."

During the whole course of these proceedings, viz., from the 5th April, 1863, to the 24th April, 1864, the Alexandra remained under seizure and in the possession of the officers of Customs.

At the end of that time, the Executive having no legal power to detain her, she came again into the possession of Messrs. Fawcett, Preston, and Co., the persons claiming to be her owners, by whom she was, in June 1864, sold to a Mr. Henry Lafone, a merchant residing at Liverpool. By her new owner her name was then changed to "the Mary;" her fittings on deck and below were altered and made apparently suitable to a vessel of commerce; and in July 1854 she sailed from Liverpool for Bermuda and thence to Halifax. Mr. Seward, on being informed of her arrival there, wrote as follows to Mr. Hume Burnley, Her Britannic Majesty's Chargé d'Affaires at Washington:—†

Mr. Seward to Mr. Burnley.

"Sir, "*Department of State, Washington, September* 13, 1864.

"This Department has been informed that the steamer Mary, which formerly, under the name of the Alexandra, was charged in the British Courts with having been built for the naval service of the insurgents, has arrived at Halifax for the supposed purpose of there being armed and equipped for that service.

"It is consequently suggested that you communicate with the Governor of Nova Scotia, in order that the hostile designs of that vessel against the United States and their shipping may not be carried into effect from any port within his jurisdiction.

"I have, &c.

(Signed) "WILLIAM H. SEWARD."

A copy of this Note was at once transmitted by Mr. Burnley to the Lieutenant-Governor of Nova Scotia, who replied as follows:—

Lieutenant-Governor Macdonnell to Mr. Burnley.

"Sir, "*Government House, Halifax, Nova Scotia, September* 30, 1864.

"I have the honour to acknowledge the receipt of yours of the 13th instant, which did not reach me till the 28th instant. Your letter incloses a communication from Mr. Seward, representing that

* Appendix, vol. iii, p. 57. † Ibid., vol. ii, p. 272.

Part III.

Introductory statement.

the Mary, formerly the Alexandra, has arrived at Halifax for the supposed purpose of being armed and equipped for the Confederate Service.

"Mr. Seward therefore suggests that you should communicate with me, in order that the hostile designs of that vessel against the United States and their shipping may not be carried into effect from any port within my jurisdiction.

"In reply, I have to state that, in future, as heretofore, my most strenuous exertions shall be directed to maintaining within the neutral waters of this portion of Her Majesty's dominions the strictest observance of those orders which have been issued for my guidance in reference to belligerent cruizers, whether Federal or Confederate.

"I cannot, however, interfere with any vessel British owned, in a British harbour, on mere suspicion; nevertheless I have so decided a determination to prevent any abuse of the accommodation afforded by this port to any party, that I have instituted inquiry, for my own satisfaction, into the rumoured destination of the Mary. I have even directed that the Mary shall be watched, and am prepared to interfere, if any illegal equipment of that vessel, for warlike purposes, be attempted in this province.

"At the same time you may inform Mr. Seward that the result of my inquiries hitherto leads me to suppose that the Mary, although originally strongly built, and apparently intended for warlike purposes, is now lying here an embarrassment to her owners, unsaleable and unserviceable, either as an ordinary merchantman or a cruizer. Her speed under steam does not exceed four and a half knots, and I believe she is considered a failure, whatever may have been her original destination. Therefore no difficulty is likely to arise in her case.

"I have, &c.

(Signed) "R. G. MACDONNELL, *Lieutenant-Governor, &c.*"

The Mary returned in November from Halifax to Bermuda, and thence proceeded to Nassau, where, on the 13th December, 1864, she was seized by order of the Governor, and proceedings were instituted against her in the Vice-Admiralty Court of the Colony,* it having been discovered that she had taken on board at Bermuda certain packages the contents of which afforded some evidence that a design existed of employing her in the naval service of the Confederate States. The cause was heard on the 22nd and 23rd May, 1865, and on the 30th May the Court decided that there was no "reasonably sufficient" evidence of illegal intent to support a sentence of forfeiture, and the vessel was accordingly released.† The war had by that time terminated, and all armed resistance to the authority of the Government of the United States was at an end. The costs and expenses which the Colonial Government incurred by the seizure of the vessel amounted to 311*l.* 18*s.*

El Tousson and El Monassir (Iron-clad Rams).

On the 7th July, 1863, Mr. Dudley made formal application to the Collector of Customs at Liverpool to seize, under the provisions of the above-mentioned Act, a vessel described by him (Mr. Dudley) as "an iron-clad steam-vessel of war," launched three days before and then lying at Birkenhead.‡ He at the same time laid before the Collector several depositions on oath, sworn by himself and various other persons, in which it was stated that two iron-clad steam-ships, similar in all material respects to each other, had for many months been in process of construction in the shipbuilding yard of Messrs. Laird and Co., shipbuilders of Birkenhead; that they were of very great strength and manifestly designed for vessels of war; that each was furnished with a ram or piercer of wrought iron projecting under the water-line, and was also prepared to receive two iron turrets for heavy guns, and that two of such turrets were being constructed in the yard. One only of the said vessels had been launched, and to this Mr. Dudley's application related. The said depositions contained also allegations tending to show that the vessels were intended for the naval service of the Confederate States.

Copies of these depositions and of Mr. Dudley's application were, on the 11th July, 1863, sent by Mr. Adams to Earl Russell.§

On the 13th July these depositions were referred to the proper Departments of the Government, and to the Law officers of the Crown.‖

That these two vessels were in course of construction, had for a long time been known to Mr. Dudley, and he had sent information respecting them to the Government of the United States commencing in the month of July 1862. It was Mr. Dudley's opinion that they would be most formidable ships, possessing more power and speed than any iron-clads previously built, and so heavily plated as to be invulnerable.

Further depositions in support of the application were subsequently submitted by Mr. Dudley to the Collector of Customs, and transmitted by Mr. Adams to Earl Russell.¶

The second of the two vessels above-mentioned was launched on the 29th August, 1863; and an application, supported by sworn depositions, for the seizure of her, was, on

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* Appendix, vol. ii, p. 258. † Ibid., p. 286. ‡ Ibid., p. 317.
§ Ibid., p. 315. ‖ Ibid., p. 323. ¶ Ibid., pp. 326, 333.

the 1st September, 1863, made by Mr. Dudley to the Collector of Customs at Liverpool. Copies of these further depositions were sent by Mr. Adams to Earl Russell.*

Her Majesty's Government had, at the earliest moment, given directions that a strict watch should be kept over the vessels, and that diligent inquiry should be made for the purpose of ascertaining their character and destination.

It was at first reported that they were built for the Government of France. Subsequently, they were claimed by a M. Bravay, a French merchant and member of a firm carrying on business in Paris, who stated that he had purchased them on account of the Pasha of Egypt. M. Bravay had in fact, in August 1863, made an application to the French Government, stating the alleged purchase, and requesting that the good offices of the French Embassy in London might be used in his behalf, in order to enable him to send the vessels to Alexandria;† and it further appeared that he had, in February 1863, made a claim upon the Pasha's Government on account of two iron-clad vessels of war which he affirmed that he had been ordered to procure by the then Pasha's predecessor (who died in 1862), and for which he alleged that he had paid a large sum on account.‡ Finally, he produced to the British Naval Attaché at Paris a number of papers relating to the vessels, and furnished him with a copy of a legal instrument, dated 18th July, 1863, from which it appeared that the iron-clads had, in fact, been built to the order of Bullock, but that Bullock's interest in them had been transferred, or purported to be transferred, to Bravay.§

On the 28th August, 1863, Her Britannic Majesty's Consul-General in Egypt reported to the Government that the Pasha of Egypt refused to ratify the order alleged to have been given by his predecessor, or to purchase the vessels. This Report was received by the Government on the 5th September.‖

On the same 5th September the builders of the vessels, in reply to an inquiry addressed to them by the Under-Secretary of State for Foreign Affairs, wrote to him as follows:—¶

Messrs. Laird Brothers to Her Majesty's Foreign Office.

"Sir, "*Birkenhead, September* 5, 1863.

"We have received your letter of the 4th instant, stating that Lord Russell has instructed you to request us to inform him, with as little delay as possible, on whose account and with what destination we have built the iron-clad vessels recently launched and now in course of completion at our works.

"In reply, we beg to say, that although it is not usual for shipbuilders to declare the names of parties for whom they are building vessels until the vessels are completed and the owners have taken possession, yet in this particular case, in consequence of the many rumours afloat, coupled with the repeated visits of Mr. Morgan, the Surveyor of Customs, to our works, we thought it right to ask permission of the parties on whose account we are building the vessels to give their names to the English Government, in the event of such information being asked for officially in writing.

"They at once granted us the permission we sought for.

"We therefore beg to inform you that the firm on whose account we are building the vessels is A. Bravay and Co., and that their address is No. 6, Rue de Londres, Paris, and that our engagement is to deliver the vessels to them in the port of Liverpool when they are completed according to our contract.

"The time in which we expect to have the first vessel so completed is not less than one month from this date, and the second not less than six or seven weeks from this date.

"We are, &c.

(Signed) "LAIRD BROTHERS.

"A. H. Layard, Esq., M.P."

The inquiries directed by Her Majesty's Government were actively prosecuted, and, although they led to no conclusive result, nevertheless convinced the Government that there was a reasonable prospect of obtaining sufficient evidence as to the destination of the vessels. On the 9th September, 1863, both vessels being then in an unfinished state, the following notice was sent to the builders by the Secretary of the Treasury:—

Her Majesty's Treasury to Messrs. Laird Brothers.

"Gentlemen, "*Treasury Chambers, September* 9, 1863.

"I am desired by my Lords Commissioners of Her Majesty's Treasury to acquaint you that their Lordships have felt it their duty to issue orders to the Commissioners of Customs that the two iron-clad steamers now in the course of completion in your dock at Birkenhead are not to be permitted to leave the Mersey until satisfactory evidence can be given of their destination, or at least until the inquiries which are now being prosecuted with a view to obtain such evidence shall have been brought to a conclusion.

"I am, &c.

(Signed) "GEORGE A. HAMILTON."

"Messrs. Laird and Co., Birkenhead."

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* Appendix, vol. ii, pp. 345, 349. † Ibid., p. 339. ‡ Ibid., p. 315.
§ Ibid., p. 372 ‖ Ibid, p. 353. ¶ Ibid., p. 355.

The builders replied as follows :—*

"In reply, we beg to inform you that we have forwarded a copy of your letter to Messrs. A. Bravay and Co., at No. 6, Rue de Londres, Paris, on whose account we are building the vessels, and to whom we beg to refer you for further information; inasmuch as our engagement with them is to deliver the vessels at the port of Liverpool when they are completed according to our contract."

The builders having informed the Collector of Customs that they wished to take the vessel which was nearest completion (named El Tousson) for a trial trip, in order to test the machinery, but with an assurance that she should be brought back again, they were told that circumstances had come to the knowledge of the Government which gave rise to an apprehension that an attempt might be made, without the privity and against the intention of the builders themselves, to carry away the vessel by force while on such trial-trip.† The Government, therefore, could not permit the trip to take place, unless on the condition that a force of seamen and marines, from Her Majesty's Channel Fleet (which was then in the Mersey), sufficient to defeat any such attempt, should be placed on board of the vessel.

On the 7th October, 1863, the builders were told that, in consequence of further information received by the Government, it was deemed necessary to place an officer of the Customs on board the vessel named El Tousson, with authority to seize her on behalf of the Crown in the event of any attempt being made to remove her from her actual position, and that he was instructed to obtain from the Commanding Officer of Her Majesty's ship of war Majestic any protection which might be necessary to support him in the execution of his duty.‡

On the 9th October, 1863, orders were issued to seize both the vessels, and they were seized accordingly.§ The vessels remained under seizure from that time until the month of May, 1864, when they were, by agreement, sold and transferred to Her Majesty's Government for the aggregate sum of 220,000*l.*‖ The evidence which the Government had up to that time been able to obtain, was so imperfect as to make the event of a trial doubtful; and in agreeing to the purchase, Her Majesty's Government was mainly actuated by a desire to prevent by any means within its power (however costly) vessels of so formidable a character, constructed in a British port, from passing directly or indirectly into the hands of a belligerent.

The Canton or Pampero.

On the 18th October, 1863, Earl Russell received from Mr. Adams the following Note (with an inclosure):—¶

Mr. Adams to Earl Russell.

"My Lord, "*Legation of the United States, London, October* 17, 1863.

"It is with great regret that I find it my duty once more to cal lyour Lordship's attention to the efforts making in this kingdom to aid the insurgents in America in carrying on their resistance to the Government of the United States. I have strong reason for believing that, in addition to a very formidable steam ram now in process of construction at the port of Glasgow, but not yet so far advanced as fully to develop her character, there is another steamer ready to be launched, called the Canton, having all the characteristics of a war-vessel, which is about to be fitted up and dispatched with the same intent from the same place. I beg leave to submit to your Lordship's consideration some extracts from a letter addressed to me by W. L. Underwood, Esq., the Consul of the United States, giving some information in regard to this case. Mr. Underwood himself entertains no doubt of the destination of this vessel, although from the secrecy used in the process of construction and preparation, itself a cause of suspicion, he has been slow in gaining evidence on which to base a representation.

"Not doubting that Her Majesty's Government will take all suitable measures to ascertain the correctness of these allegations, I pray, &c.

(Signed) "CHARLES FRANCIS ADAMS."

The extracts inclosed in the above note contained a description of the Canton.

The information thus furnished by Mr. Adams was immediately communicated to the proper Departments of the Government, and the officers of Customs and local authorities were instructed to make immediate inquiry, and to take such legal measures as might prevent any attempt to infringe the law.

The inquiries thus directed were pursued for a considerable time with very little result. The vessel was carefully examined, both by the Surveyor of the Customs, and by the commanding officer of Her Majesty's ship Hogue, stationed in the Clyde; and the specifi-

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* Appendix, vol. ii, p. 358. † Ibid., p. 367. ‡ Ibid., p. 387, § Ibid., pp. 388, 389, *et seq.*
‖ Ibid., pp. 457–459. ¶ Ibid., p. 467.

cations on which she was constructed, as well as the contract for building her, were produced and exhibited by the agents through whom the contract had been made. It appeared that, though she was being fitted up as a passenger ship, there were some peculiarities in her construction such as to render her capable of being converted, not indeed into a regular ship of war, but into a vessel serviceable for war purposes. She had been contracted for by a person resident in London, through the agency of a Glasgow firm; and this firm, as well as her builders, stated that they believed her to be intended for the merchant service, and were not aware of any intention to dispose of her to the Confederate States.

The vessel was launched on the 29th October, 1863 (her name having been previously changed to "the Pampero");* and the United States' Consul at Glasgow soon afterwards made a formal application that she might be seized, supporting it by several depositions on oath, to which others were afterwards added from time to time.† No evidence whatever of her being intended for the Confederate Service, beyond vague rumour and hearsay, was furnished by the United States' Consul in these depositions or otherwise, nor by Mr. Adams.

By the end of November, however, the inquiries directed by the Government had led to the production of some evidence, and it was eventually ascertained that the real owners of the vessel were several persons resident respectively in London, Manchester, Glasgow, and Dumbarton, and that they were under a contract to sell her to one Sinclair, calling himself a citizen of the Confederate States; but that Sinclair had lately been, and then was, desirous of cancelling the contract. A letter from Sinclair asking that the contract might be cancelled, was placed in the hands of the Law Officers of the Crown for Scotland, and was as follows:—‡

"My dear Sir, "*London, September* 24, 1863.

"When I made a contract with you in November last for the building of a steam-ship, I was under the impression, having taken legal advice, that there was nothing in the law of England that would prevent a British subject from building such a vessel for any foreign subject as a commercial transaction. Although the recent decision of the Court of Exchequer in the case of the Alexandra would seem to sustain the opinion, yet the evident determination of your Government to yield to the pressure of the United States' Minister, and prevent the sailing of any vessel that may be suspected of being the property of a citizen of the Confederate States, is made so manifest that I have concluded it will be better for me to endeavour to close that contract referred to, and go where I can have more liberal action.

"In these circumstances I desire to put an end to our transaction, by your returning me the cotton certificates which I delivered to account of price, and my cancelling the contract.

"The increased value of shipping since the date of our transaction will, I have no doubt, enable you at once to meet my wishes in this respect. I shall feel much obliged by an early reply.

(Signed) "G. SINCLAIR.

"Edward Pembroke, Esq."

On the 10th December the Pampero was, by direction of Her Majesty's Government, seized by the Collector of Customs at Glasgow, and legal proceedings were instituted to obtain a declaration of forfeiture.§ The case was appointed to be tried in April 1864; when, no defence being made, a verdict was entered for the Crown, and the vessel was declared forfeited. She remained under seizure until October 1865, and was then given up to her owners, all reasons for detaining her being at an end.‖

The Amphion, the Hawk, the Virginia, the Louisa Ann Fanny, the Hercules.

In the year 1864 representations were made by Mr. Adams to Earl Russell respecting two vessels named the Amphion and Hawk; and, in the year 1865, respecting three others, the Virginia, the Louisa Ann Fanny, and the Hercules, all of which he alleged to be fitting out in ports of the United Kingdom under suspicious circumstances, and to be probably destined for the naval service of the Confederate States. In each of these cases the information furnished was immediately transmitted to the proper Departments of the Government, and careful inquiry was made. In none of them were any reasonable grounds of suspicion found on examination to exist, which would have justified the Executive in interfering, and none of the suspected vessels were ever in fact armed or used for purposes of war. The dates at which Mr. Adams' representations in these several cases were respectively first received, and were referred for inquiry, were as follows:—

The Amphion.—Received March 18, 1864; referred on the same day to the Home Department.¶

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* Appendix, vol. ii, p 478. † Ibid., p. 486. ‡ Ibid., p. 511.
§ Ibid., p. 520. ‖ Ibid., p. 533. ¶ Ibid., pp. 566, 567.

Introductory statement.

The Hawk.—Received April 16, 1864; referred to the Treasury, the Home Department, and the Lord Advocate (the Law Officer of the Crown for Scotland), April 18, 1864.*

The Virginia and Louisa Ann Fanny.—Received January 30, 1865; referred to the Treasury, February 1, 1865.†

The Hercules.—Received February 7, 1865; referred to the Treasury and to the Home Department, February 8 and 9, 1865.‡

In acknowledging the receipt of Mr. Adams' Note respecting the Hercules, Earl Russell wrote as follows:—§

Earl Russell to Mr. Adams.

"Sir, "*Foreign Office, February* 8, 1865.

"I have received your letter dated the 7th instant, and delivered at the Foreign Office at a late hour yesterday evening after the close of business; but not being marked immediate, it did not come under the notice of the Under-Secretary of State until 1 P.M. to-day.

"The matter shall be immediately attended to, but, in the meantime, I wish to call your attention to the dates of the letters which you inclose, The first letter of the United States' Consul, at Liverpool, is dated the 2nd instant, and affirms that a steamer named the Hercules is fitting out in the Clyde for the Confederate service, and that this vessel is to be ready for sea in eight days. The second letter which you transmit to me is dated Glasgow, the 4th instant, and contains further information respecting this vessel, and states, moreover, that the trial trip is to take place to-day.

"In a former instance I was able by means of the Lord Advocate to prosecute the owners of a vessel building in the Clyde, and to get a verdict entered by consent which defeated the purpose of the Confederate agent. But these operations are very quick, and unless I have timely notice I can have but little hopes of stopping these nefarious transactions.

"I have, &c.
(Signed) "RUSSELL."

The attention of the Government had been directed to the Amphion and Hawk, and inquiry made respecting them, before the receipt of any representation from Mr. Adams concerning those vessels. A vessel called the Ajax, as to which no representation had been made or information furnished, but which was suspected by some of her crew of being intended for the Confederate service, was examined and searched by the officers of Customs at Queenstown, and afterwards, under instructions from the Government, by the Colonial authorities at Nassau.‖ She was not, however, found to be adapted or intended for warlike use, and was never applied to such use.

In sending information to Mr. Adams respecting the Virginia, Mr. Dudley, in a letter dated the 27th January, 1865, wrote as follows:—¶

"Like the Sea King, any steamer now destined for privateering fits away as a commercial vessel, and there is nothing about her movement before she leaves port, or until within a few hours of her leaving, when she may suddenly change owners, and her master be given authority to sell at a given sum out of British waters, to create any mistrust of the purpose of those who control her here.

"Under such a mode of operations it is next to impossible for us to get testimony in season, and sufficiently strong, to ask for their detention. The only course left me, therefore, is to call your attention to all cases offering any reasonable ground of suspicion, and leave them to be disposed of as you may deem most expedient."

Summary.

The preceding statement of facts shows the general course of conduct pursued by Her Britannic Majesty's Government, in relation to vessels alleged to be, or suspected of being, fitted out or prepared within British territory for belligerent use. It includes all the cases (except those of the Florida and Alabama, which will be presently stated), in which information that any vessel was being built, equipped, or prepared for sea in any British port, and intended, or supposed to be intended, for warlike use, was received by, or came to the knowledge of, Her Majesty's Government before the departure of such vessel.

It will have been seen—

1. That in every case directions were given, without the least delay, for investigation and inquiry on the spot by the proper officers of Government; and these officers were ordered to keep a watchful eye on the suspected vessel; and the directions and orders so given were executed.

2. That in some cases the attention of the Government had been directed, before the

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* Appendix, vol. ii, pp. 543, 544. † Ibid., pp. 595, 596. ‡ Ibid., p. 580.
§ Ibid., p. 582. ‖ Ibid., pp. 575, 590. ¶ Ibid., p. 596.

receipt of any communication from Mr. Adams, to vessels as to which there appeared to be ground for suspicion.

3. That as soon as any evidence was obtained it was submitted, without delay, to the Law Officers of the Crown; and they were called upon to advise as to the proper course of proceeding.

4. That in every case in which reasonable evidence could be obtained the vessel was seized by the officers of the Government, and proceedings were instituted against her in the proper Court of law. By reasonable evidence is understood testimony which, though not conclusive, offered nevertheless a reasonable prospect that the Government might be able, when the time for trying the case should arrive, to sustain the seizure in a Court of law.

5. That in several of the cases in which a seizure was made the Government found itself unable, or uncertain whether it would be able, to sustain the seizure by sufficient evidence, and was under the necessity of either releasing the vessel and paying the costs of the trial and detention, or of purchasing her at the public expense.

6. That in every one of the cases enumerated either the information furnished to the Government proved to be erroneous, and the supposed *indicia* of an unlawful intention to be absent or deceptive, or this intention was defeated or abandoned by reason of the measures taken and the vigilance exercised by Her Majesty's Government.

7. That it is easy to infer special adaptation for war from peculiarities or supposed peculiarities of construction which are really equivocal; and such inferences are liable to be fallacious, especially in cases where the vessel is constructed with a view to some employment which, though commercial, is out of the ordinary course of commerce.

Case of the Anglo-Chinese Flotilla.

The steady determination of Her Britanic Majesty's Government to guard against any act or occurrence which might be supposed to cast a doubt on its neutrality, and its readiness even to go beyond, for this purpose, the strict measure of its international obligations, were exemplified in the case of the ironclad rams, and were even more strikingly shown in that of the flotilla of gunboats equipped for service in China.

In March 1862 the Chinese Government gave authority to Mr. Lay, Inspector-General of Chinese Customs, then on leave in England, to purchase and equip a steam-fleet for the Emperor's service;* and a sum of money was placed at his disposal for the purpose.

Mr. Lay accordingly entered into an agreement with Captain Sherard Osborn, an officer in Her Majesty's Navy, according to which the latter was to take command-in-chief of the fleet, receiving orders from the Chinese Government through Mr. Lay. Her Majesty's Government, by Orders in Council, gave permission to enlist officers and men for this service.

In September 1863 Captain Sherard Osborn arrived in China with the flotilla, consisting of six vessels of war. These were the Pekin, China, and Keang-soo of six guns each, the Kwangtung and Tien-tsin of four guns, and the Amoy of two, the Thule yacht, and the Ballarat storeship.

A difference, however, arose between the Chinese Government on the one side, and Mr. Lay and Captain Osborn on the other, as to the conditions on which Captain Osborn was to hold his command; and this difference not having been adjusted, Captain Osborn informed Sir F. Bruce, Her Majesty's Minister at Pekin, that the force would be disbanded. He asked at the same time whether Sir F. Bruce saw any objection to his surrendering to the Chinese Government the eight ships which he had brought out.†

Sir F. Bruce thereupon informed the Chinese Government and Captain Osborn of his conviction that Her Majesty's Government would not have consented to the organisation of this powerful squadron, unless on the understanding that it was to be placed under the orders of an officer in whose prudence and high character they had full confidence, and that he could not consent to the ships and stores being handed over to the Chinese Government without instructions to that effect from Her Majesty's Government.†

Among other reasons for this course Sir F. Bruce reported to Her Majesty's Government that the ships were not such as the Chinese could manage, and that it would not be safe to sell them on the coast, as they might fall into the hands of hostile Daimios in Japan, or be bought for employment as Confederate cruizers in those seas.‡ The following letter from the United States' Minister at Pekin to Sir F. Bruce shows that he was equally alive to the latter danger:—

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* Appendix, vol. ii, p. 681. † Ibid., p. 682. ‡ Ibid., p. 686.

Part III.

Introductory statement.

"*Mr. Burlingame to Sir F. Bruce.**

"Sir, "*Pekin, November* 7, 1863.

"When the Chinese Government refused the doings of its agent, Mr. Lay, and there was nothing left for Captain Osborn but to dissolve the force of the flotilla, the question was how it could be done with safety. I feared that the ships might fall into the hands of the Confederates, who are supposed to have agents in China; and then there was the common apprehension from lawless men on the coast in the interest of the Taepings as well as from pirates, and the desire of the Daimios in Japan to procure steamers at any price.

"It was clear that the Chinese could do nothing of themselves with the steamers, and that, unless something were done by you, they would certainly fall a prey to one of these several dangers. In my solicitude on account of the rebels in my own country, I made an earnest protest against the delivery of the ships to the Chinese. You responded in that spirit of comity which has ever distinguished our relations, that the ships should be taken back to England, and that no effort on your part should be spared to prevent them from taking a direction against the interests of my country.

"Though subsequent events made it necessary for the ships to take the direction indicated by the desire of the Chinese themselves, still I should be wanting in appreciation of your conduct did I not mark it with my most heartfelt thanks, and at as early a period as possible bring it to the attention of my Government.

"I have, &c.

(Signed) "A. BURLINGAME."

It was eventually arranged that Captain Osborn should send part of the flotilla to England, take the other portion to Bombay, and sell them all on account of the Chinese Government.

Captain Osborn accordingly took three vessels, the Keangsoo (6 guns), Kwangtung (4 guns), and Amoy (2 guns), and the despatch-boat Thule, to Bombay, where he arrived in January 1864.† At his request the Government of India took charge of the vessels and the military stores on board of them, and he then proceeded to England, where he arrived in February. The rest of the flotilla, consisting of the Pekin and China (6 guns), the Tien-tsin (4 guns), and the Ballarat store-ship, were sent to England, where they arrived in April.‡

On the first intelligence of the arrangement made with the Chinese Government for disposing of these vessels in India and England, a letter was addressed by the Foreign Office to the Admiralty, India Office, and Colonial Office,§ stating that the "vessels are understood to be fully equipped for belligerent purposes, and Her Majesty's Government are of opinion that it is incumbent upon them to take any precaution that may legally be within their power to prevent them from passing in their present state into the hands of any Power or State engaged in hostility with another Power or State in amity with Her Majesty."

It was therefore desired "that the attention of the Naval, Colonial, or Indian authorities, both at home and on any station abroad within Her Majesty's dominions, where the vessels may be expected to be met with, should be called to the necessity of taking such measures as may be legally within their power in furtherance of the views of Her Majesty's Government in this matter; and specifically as regards Captain Osborn, who is an officer in Her Majesty's naval service, that he should be pointedly cautioned against disposing of any of the vessels to be used in the naval service of a belligerent Power."

Sir F. Bruce, at Pekin, and Sir H. Parkes, at Shanghae, were instructed to make a similar communication to Captain Osborn, in case that officer was still in China when the despatch reached them.

In anticipation of these instructions Commodore Montresor had warned Captain Osborn on his arrival at Bombay against selling the vessels, and had joined with the Governor in remonstrating against any attempt to sell the Thule, which, as being an unarmed despatch-boat, did not, in Captain Osborn's opinion, come within the same category as the armed vessels, but which the two former officers considered open to objection, as having been equipped for naval service, and capable of being adapted in some degree to belligerent purposes.‖

The Thule was, notwithstanding, advertised for sale in Bombay on the 16th February, after Captain Osborn's departure; but the Government of Bombay forbade the sale. Orders were sent from home in April to permit the sale of the Thule, but to retain the other vessels. Care was also to be taken that the Thule was not equipped as a vessel of war for either of the belligerent parties in America.¶

The sale, however, did not take place.

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* Appendix, vol. ii, p. 689. † Ibid., p. 692. ‡ Ibid., p 700.
§ Ibid., p. 684. ‖ Ibid., p. 695. ¶ Ibid., pp, 700, 703.

Introductory statement.

The three armed vessels sent to England arrived in April, and were moored in Woolwich Dockyard. The Ballarat, being merely a store-ship, did not come under the custody of the Government, and was sold.

The Admiralty refused to purchase the vessels for the Government; and it was settled that they should be placed at moorings in the Medway, and there retained until the objections to their sale might be removed, and that any expenses incurred by this course should be defrayed by Her Majesty's Government.*

In the meanwhile Captain Osborn, learning that it was not the intention of the Government to purchase the vessels left in charge of the Bombay authorities, wrote to ask permission to relieve himself of all responsibility, by substituting a mercantile firm at Bombay as the agents to carry out Sir Frederick Bruce's instructions for the sale of the vessels on account of the Chinese Government.*

The matter was referred to the Law Officers, who reported that the sale within Her Majesty's Dominions, even to a belligerent Power, of armed ships of war, already legally equipped with a view to a different object under Her Majesty's license, would not be illegal. The Foreign Enlistment Act, did not, in their opinion, prohibit such a sale. Her Majesty's Government had therefore two alternatives. It might, on the one hand, inform Captain Osborn that it did not interpose any objection to his selling the vessels to any person or in any way that he might think fit; such sale (provided no addition were made to their equipments or furniture, before delivery to the purchaser, for the purposes of any belligerent Power) being in no way contrary to law. If, on the other hand, the Government were not prepared to take this course, it was morally bound to take upon itself the responsibility from which Captain Osborn desired to be freed.

Captain Osborn, the Admiralty, and India Office were thereupon apprized that Her Majesty's Government could not at present sanction the sale of the vessels in India, but was prepared to take on itself the responsibility of detaining the vessels in question unsold until further orders. A similar communication was made to the Chinese Government, through Sir F. Bruce, with the assurance that the Chinese Government should not ultimately lose the value of the vessels.†

An offer was made in December, 1864, by Messrs. Ritherdon and Thompson, to purchase the three vessels in England on behalf of a foreign Government.‡ They were informed that a written guarantee would be required from the Representative of the Powor for whom the vessels might be purchased, that they would not be used for warlike purposes against any Power with whom the Queen was at peace, and that the Government reserved to itself the right of refusing, without giving any reason, to sell the vessels when the name of the principal in the transaction should be disclosed. The negotiation was dropped. Overtures were also made in 1865 by Messrs. Bake and Co. to buy the vessels for the Government of Mexico, but these also failed.

A Committee appointed to assess the value of the vessels at the time they left China valued them, with the concurrence of Captain Osborn, at 152,500*l.*, and Mr. Wade was instructed to inform the Chinese Government that the Admiralty would be intrusted with the sale of them, that the amount realized would be transmitted to the Chinese Government, and any loss upon the original value of the ships would be made good by Her Majesty's Government. The Admiralty was at the same time again cautioned against the sale of the vessels either directly or indirectly to any State or body of persons at war with a State in amity with Her Majesty.§

In June, 1865, the Civil War in America having come to an end, the restrictions on the sale of the vessels were withdrawn; but, from the delay and consequent deterioration, the price realized fell far short of the original estimate.

The Government of Egypt purchased the three vessels in England for 30,100*l.* Of the four vessels left at Bombay, the Government of India purchased two for 14,500*l.*, from which however a sum of 6,376*l.* had to be deducted for dockyard expenses. A sum of 11,250*l.* was realized by the sale of the two remaining vessels; and the balance of 103,026*l.* was provided by a Parliamentary grant, and paid over to the Chinese Government.‖

The guns and munitions of war on board the vessels had been procured from Her Majesty's Government, and they were taken back by the Military authorities in England and India, and the amount remitted to the Chinese Government.

Sir Frederick Bruce, writing in December, 1865, from Washington, to urge a speedy settlement of the Chinese claim, said, "I may mention that there is no doubt that agents

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* Appendix, vol. ii, p. 701. † Ibid., p. 704. ‡ Ibid., p. 710.
§ Ibid., pp. 712-714. ‖ Ibid., p. 721.

of the Confederates were on the look-out to purchase the more powerful vessels of the squadron from the Chinese, had they been left in their hands, and it is equally certain that the Chinese would have sold these vessels as being unsuited to them. It is not difficult to conjecture what would have been the effect on our relations with this Government had any of these vessels been turned into Confederate cruizers. It would have been impossible to disabuse this Government and people of the idea that the flotilla was a deep-laid scheme to supply the Confederates with an efficient squadron in the Pacific."*

And Mr. Adams, in a note to Lord Clarendon of December 28, 1865, on the same subject, wrote as follows:†—"In a conversation which I had the honour to hold with your predecessor, the Right Honourable Earl Russell, on the 25th of February, 1864, I acquitted myself of what was to me a most agreeable duty, of signifying to Her Majesty's Government the high sense entertained by that which I have the honour to represent, of the friendly proceedings of Her Majesty's Envoy in China, Sir Frederick Bruce, in regard to the disposition to be made of the vessels then known as the Osborn Flotilla."

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* Appendix, vol. ii, p. 718.

† Ibid., p. 719.

PART IV.

Considerations proper to be kept in view by the Arbitrators in reference to the Cases of the Florida, Alabama, Georgia, and Shenandoah.

In considering the facts about to be presented to the Tribunal relative to the four vessels which, after having been originally procured from British ports, were employed as Confederate cruizers in the war, it is right that the Arbitrators should bear in mind the following propositions, to some of which their attention has already been directed in an earlier part of this Case :—

1. The powers possessed by Her Majesty's Government to prohibit or prevent the fitting out, arming, or equipping within its jurisdiction of vessels intended for the naval service of the Confederate States, or the departure with that intent of vessels specially adapted within its jurisdiction to warlike use, were powers defined and regulated by the Statute or Act of Parliament of July 3, 1819 (the Foreign Enlistment Act).

2. The modes of prevention provided by the Statute were two, of which both or either might be adopted as might be deemed most expedient, namely, (1), the prosecution of the offender by information or indictment; (2), the seizure of the ship, which, after seizure, might be prosecuted and condemned in the same manner as for a breach of the Customs or Excise laws, or of the laws of trade and navigation.

3. The persons empowered to seize under the provisions of the Statute were any officers of Customs or Excise or of Her Majesty's Navy who by law were empowered to make seizures for forfeitures incurred under the laws of Customs or Excise, or of trade or navigation; and the seizure was to be made in the same manner as seizures are made under those laws.

4. The Customs officers were not empowered by law to make a seizure until an information on oath should have been laid before them. Nor, without such an information on oath, had any Magistrate jurisdiction under the provisions of the Statute.

5. After a seizure made, it was by law necessary that proceedings for the condemnation of the vessel seized should be instituted in the Court of Exchequer and brought to trial before a jury. In order to obtain a condemnation it was necessary to prove two things,—

(*a.*) That there had been in fact an equipping, furnishing, fitting-out, or arming of the vessel, or an attempt or endeavour so to do, or an issuing or delivery of a commission for the vessel, within the dominions of the Crown;

(*b.*). That the act had been done with intent, or in order, that the vessel should be employed in belligerent operations as described in the 7th Section of the Statute.

6. By proof, in a British Court of law, is understood the production of evidence sufficient to create in the mind of the Judge or jury (as the case may be), a reasonable and deliberate belief, such as a reasonable person would be satisfied to act upon in any important concerns of his own, of the truth of the fact to be proved. And by evidence is understood the testimony, on oath, of a witness or witnesses produced in open Court, and subject to cross-examination, as to facts within his or their personal knowledge. Testimony which is mere hearsay, or as to the existence of common reports, however prevalent and however generally credited, or as to any matter not within the knowledge of the witness, is not admitted in an English Court.

7. In the judgment of Her Britannic Majesty's Government, and in that of its official advisers, the special adaptation of a vessel to warlike use was among the acts prohibited by the Statute, provided there were sufficient proof of an unlawful intent, although the vessel might not be actually armed so as to be capable of immediate employment for war. But no Court of law had pronounced a decision on this point, and the question was never raised before any such Court until the trial of the case of the Alexandra in 1863.

Her Britannic Majesty's Government now proceeds to state for the information of the Tribunal the facts relative to the cases of the Florida and Alabama. It may be the

Part IV.

Introductory statement.

remarked that, when these cases were brought to the notice of Her Majesty's Government and up to the time of the departure of the Alabama from Liverpool, there had been no instance, from the commencement of the war, of a vessel ascertained to have been fitted out in, or despatched from, any British port for the purpose of engaging in hostilities against the United States. The only vessel to which the attention of Her Majesty's Government had been directed before the Florida had proved to be a blockade-runner.

It may be added that the claims for the interference of Her Majesty's Government in the case of these and other vessels were based, according to the statement of Mr. Adams in his letter to Earl Russell, dated 9th October, 1862, on evidence considered by him to "apply directly to infringements of the Municipal Law, and not to anything beyond it."*

* Appendix, vol. i, p. 216.

PART V.

Statement of Facts relative to the Florida.

On the 19th February, 1862, Earl Russell received from Mr. Adams the following Note and inclosure :—

*Mr. Adams to Earl Russell.**

"My Lord, "*Legation of the United States, London, February* 18, 1862.

"I have the honour to submit to your consideration the copy of an extract of a letter addressed to me by the Consul of the United States at Liverpool, going to show the preparation at that port of an armed steamer evidently intended for hostile operations on the ocean. From the evidence furnished in the names of the persons stated to be concerned in her construction and outfit, I entertain little doubt that the intention is precisely that indicated in the letter of the Consul, the carrying on war against the United States. The parties are the same which dispatched the Bermuda, laden with contraband of war at the time, in August last, when I had the honour of calling your Lordship's attention to her position, which vessel then succeeded in running the blockade, and which now appears to be about again to depart on a like errand.

"Should further evidence to sustain the allegations respecting the Oreto be held necessary to effect the object of securing the interposition of Her Majesty's Government, I will make an effort to procure it in a more formal manner.

"I have, &c.
(Signed) "CHARLES FRANCIS ADAMS."

(Inclosure.)

Mr. Dudley to Mr. Adams.

"Sir, "*United States' Consulate, Liverpool, February* 17, 1862.

"The gun-boat Oreto is still at this port. She is making a trial trip in the river, to-day. No armament as yet on board. She has put up a second smoke-stack since I wrote you. She therefore has two funnels, three masts, and is barque-rigged. I am now informed that she is to carry eight rifled cannon, and two long swivel-guns on pivots so arranged as to rake both fore and aft. No pains or expense has been spared in her construction, and when fully armed, she will be a formidable and dangerous craft. In strength and armament quite equal to the Tuscarora, so I should judge from what I learn.

"Mr. Miller, who built the hull, says he was employed by Fawcett, Preston, and Co., and that they own the vessel. I have obtained information from many different sources, all of which goes to show that she is intended for the Southern Confederacy. I am satisfied that this is the case. She is ready to take her arms on board. I cannot learn whether they are to be shipped here or at some other port. Of course she is intended as a privateer. When she sails, it will be to burn and destroy whatever she meets with bearing the American flag.

"The Herald sailed for Charleston on Saturday last; Captain Coxeter went out in her. The Bermuda will sail this week.

"I have, &c.
(Signed) "H. DUDLEY, *United States' Consul.*"

"P.S.—The gun carriages for the Oreto, I have just learned, were taken on board on Friday night last, in a rough state, and taken down in the hold. Fraser, Trenholm, and Co. have made advances to Fawcett, Preston, and Co., and Miller, the builder.

"H. D."

A fortnight before the date of Mr. Adams' letter, Mr. Dudley, in writing to Mr. Seward, had mentioned the Oreto. He then said, "In my last two despatches I called attention to the iron screw steam gun-boat Oreto or Oretis, being built at Liverpool and fitted out by Fawcett, Preston, and Co. She is now taking in her coal, and appearances indicate that she will leave here the latter part of this week without her armament. The probabilities are she will run into some small port, and take it and ammunition on board. This of itself is somewhat suspicious. They pretend she is built for the Italian Government, but the Italian Consul here informs me that he knows nothing about it, and has no knowledge whatever of any vessel being built for his Government. There is much secrecy observed about her, and I have been unable to get anything definite, but my impressions are strong that she is intended for the Southern Confederacy. I have communicated my impressions and all the facts to Mr. Adams, our Minister in London. She has one funnel,

* Appendix, vol. i, p. 1.

three masts, bark-rigged, eight port-holes for guns on each side, and is to carry sixteen guns."

Mr. Adams had not previously to his Note of the 18th made any communication respecting this vessel to Her Majesty's Government.

Immediately on the receipt of Mr. Adams' Note and inclosure copies of both were sent to the Secretary to the Treasury, accompanied by the following letter signed by Mr. Hammond, one of the Under-Secretaries of State for Foreign Affairs:—*

"Sir, "*Foreign Office, February* 19, 1862.

"I am directed by Earl Russell to transmit to you a copy of a letter from Mr. Adams, inclosing an extract of a letter from the United States' Consul at Liverpool, in which he calls attention to a steam-vessel called the Oreto, reported to be fitting out at Liverpool as a Southern privateer; and I am to request that you will move the Lords Commissioners of Her Majesty's Treasury to cause immediate inquiries to be made respecting this vessel, and to take such steps in the matter as may be right and proper.

"I am, &c.

(Signed) "E. HAMMOND."

Earl Russell on the same day acknowledged the receipt of Mr. Adams' Note and inclosure, and stated (as the fact was) that he had lost no time in communicating with the proper Department of Government on the subject.

The Commissioners of Customs were instructed to inquire and report upon the matter; and, on the 24th February, 1862, the Secretary to the Treasury transmitted to Mr. Hammond their Report, which was as follows:—†

"*Custom-house, February* 22, 1862.

"Your Lordships having referred to us the annexed letter from Mr. Hammond, transmitting, by desire of Earl Russell, copy of a letter from Mr. Adams, inclosing an extract of a communication from the United States' Consul at Liverpool, in which he calls attention to a steam-vessel called the Oreto reported to be fitting out at Liverpool as a Southern privateer, and requesting that immediate inquiries may be made respecting this vessel,

"We report—

"That, on the receipt of your Lordships' reference, we forthwith instructed our Collector at Liverpool to make inquiries in regard to the vessel Oreto, and it appears from his Report that she has been built by Messrs. Miller and Sons for Messrs. Fawcett, Preston, and Co., Engineers, of Liverpool, and is intended for the use of Messrs. Thomas, Brothers, of Palermo, one of that firm having frequently visited the vessel during the process of building.

"The Oreto is pierced for four guns; but she has, as yet, taken nothing on board but coals and ballast. She is not, at present, fitted for the reception of guns, nor are the builders aware that she is to be supplied with guns whilst she remains in this country. The expense of her construction has been paid, and she has been handed over to Messrs. Fawcett and Preston. Messrs. Miller and Sons state their belief that her destination is Palermo, as they have been requested to recommend a master to take her to that port, and our Collector at Liverpool states that he has every reason to believe that the vessel is for the Italian Government.

"We beg further to add, that special directions have been given to the officers at Liverpool to watch the movements of the vessel, and that we will not fail to report forthwith any circumstance which may occur worthy of your Lordships' cognizance.

(Signed) "THO. F. FREMANTLE.
"GRENVILLE C. L. BERKELEY."

The Reports which the Commissioners of Customs had received from their officers at Liverpool were as follows:—‡

Mr. Edwards to the Commissioners of Customs.

"Honourable Sirs, "*Liverpool, February* 21, 1862.

"The builders of the vessel Oreto are Messrs. Miller and Sons. Mr. Miller is the chief surveyor for tonnage. By their note inclosed, the vessel is correctly described, and I have every reason to believe that she is for the Italian Government, and not for the Confederates.

"It will be seen by the note of the Surveyor, Mr. Morgan, which I annex, that, as yet, she has nothing in her, so that the information furnished to the Government is, so far, incorrect.

"Special directions have been given to the officers to observe the movements of the vessel, so that whatever takes place can be made known to the Board at any time.

"Respectfully, &c.

(Signed) "S. PRICE EDWARDS."

Mr. Miller to Mr. Edwards.

"Sir, "*Liverpool, February* 21, 1862.

"We have built the dispatch-vessel Oreto, for Messrs. Fawcett, Preston, and Co., engineers, of this town, who are the agents of Messrs. Thomas, Brothers, of Palermo, for whose use the vessel, we understand, has been built. She is pierced for four guns; she has taken nothing whatever on board except coals and ballast; she is in no way fitted for the reception of guns, as yet; nor do we know

* Appendix, vol. i, p. 2. † Ibid., p. 2. ‡ Ibid., p. 159.

that she is to have guns whilst in England. Mr. Thomas, of the firm at Palermo, frequently visited the ship whilst she was being built.

"We have handed her over to the engineers, and have been paid for her. According to the best of my information the present destination of the vessel is Palermo; and we have been asked to recommend a master to take her out to Palermo.

"I remain, &c.
(Signed) "T. MILLER."

Mr. Morgan to Mr. Edwards.

"Sir, "*February* 21, 1862.

"I beg to state that I have inspected the Oreto, now lying in Toxteth Dock, agreeably with your directions issued to-day.

"She is a splendid steamer, suitable for a dispatch-boat; pierced for guns, but has not any on board, nor are there any gun-carriages. Coals and ballast are all that the holds contain.

"Respectfully, &c.
(Signed) "C. MORGAN, *Collector.*"

A copy of the Report of the Commissioners of Customs was sent on the 26th February by Earl Russell to Mr. Adams.

Her Britannic Majesty's Minister at Turin, was directed to inquire whether the vessel was intended for the use of the Italian Government; and, on the 1st March, 1862, he telegraphed as follows, "Ricasoli tells me that he has no knowledge whatever of the ship Oreto, but will cause inquiry to be made."*

Up to this time no information whatever tending to prove that the vessel was intended for belligerent use had been obtained by Mr. Adams, or was possessed by Her Majesty's Government. She had been built for a Liverpool firm of engineers and iron-founders, and was stated by the builders to be for the use of a firm at Palermo, a member of which (himself a native of Palermo) was known to have often visited her whilst building. She was pierced for guns, but not fitted for the reception of them, and had none on board. Beyond this, Mr. Adams's note and Mr. Dudley's letter contained only vague hearsay and conjecture.

No further information could be obtained by Mr. Adams, or was received by Her Majesty's Government, up to the time of the sailing of the ship.

On the 3rd March, 1862, the Oreto was registered at the port of Liverpool, inthe name of "John Henry Thomas, of Liverpool, in the county of Lancaster, Merchant," as sole owner thereof. The Declaration made by the said John Henry Thomas at the time of registry was as follows:—†

Official Number of Ship, 44,200.—Date of Registry, March 3, 1862.

General Description of Ship.		Port of Registry.	How Propelled.
Name of Ship.	British or Foreign Built.		
Oreto	British, built at Liverpool in 1861	Liverpool	Screw.

Number of Decks	Two.	Build	Carvel.
Number of Masts	Three.	Galleries	None.
Rigged	Schooner.	Head	Shield.
Stern	Elliptic.	Framework	Wood.

MEASUREMENTS.	Feet.	Tenths.
Length from the fore part of Stem under the Bowsprit to the aft side of the head of the stern post	185	2
Main breadth to outside plank	28	3
Depth in hold from Tonnage Deck to Ceiling at Midships..	13	7

TONNAGE.	No. of Tons.
Tonnage under Tonnage Deck.	410·41
Closed-in Spaces above the Tonnage Deck, if any; viz.:	
Space or Spaces between Decks	
Poop	
Round-house	
Other inclosed Spaces, if any, naming them	
Gross Tonnage	410·41
Reduction for Space required for Propelling Power	231·90
Register Tonnage ..	178·51

Length of Engine Room	61 feet.
Number of Engines.	2
Combined Power (estimated Horse-power) Number of Horse-power ..	200

* Appendix, vol. i, p. 3. † Ibid., p. 10.

"I, the undersigned John Henry Thomas, of Liverpool, county of Lancaster, merchant, declare as follows:—I am a natural-born British subject, born at Palermo, in the Island of Sicily, of British parents, and have never taken the oath of allegiance to any foreign State. The above general description of the ship is correct. James Alexander Duguid, whose certificate of competency or service is No. 4,073, is the master of the said ship. I am entitled to be registered as owner of sixty-four shares of the said ship. To the best of my knowledge and belief no person or body of persons other than such persons or bodies of persons as are by the Merchant Shipping Act, 1854, qualified to be owners of British ships is entitled, as owner, to any interest whatever, either legal or beneficial, in the said ship. And I make this solemn declaration conscientiously believing the same to be true.

(Signed) "JOHN H. THOMAS.

"Made and subscribed the 1st day of March, 1862, by the above-named John Henry Thomas, in the presence of—

(Signed) "J. C. JOHNSTONE, Jun., *Registrar of Shipping,*
"*Port of Liverpool.*"

On the 4th March, 1862, the Oreto was cleared from the office of Customs, Liverpool, for Palermo and Jamaica, as appears from her Victualling Bill, of which the following is a copy:—*

"*Victualling Bill.*

"Pilot . Granted number [662].

"PORT OF LIVERPOOL.—ORETO.

"BONDED and Drawback Stores in the , Jas. A. Duguid, Master, for Palermo and Jamaica. Men, 52; passengers or troops, ; guns, ; 178 tons.

		Net Quantities taken on Board.
Spirits, foreign—		
Rum..	Per gallon ..	2 cases; 54 gallons.
Brandy	.. ..	10 cases; 20 gallons.
Geneva	.. ..	.. ..
Other spirits, not sweetened ..	.. ..	.. ..
Spirits, British or plantation—		
Rum.	.. ..	.. ..
Gin..	.. ..	8 cases; 16 gallons.
Whisky	.. ..	.. ..
Other spirits, not sweetened ..	.. ..	12 cases; $23\frac{1}{2}$ gallons.
Wine	.. ..	20 cases; 40 gallons.
„ (for drawback) ..	.. ..	.. ..
Beer (for drawback) ..	.. ..	.. ..
Vinegar..	.. ..	.. ..
Tea	Per lb. ..	3 chests 5 canisters; 240 lbs.
Coffee	.. ..	4 bags; 646 lbs.
„ roasted (for drawback) ..	.. ..	.. ..
Cocoa	.. ..	.. ..
„ paste	.. ..	.. ..
Sugar, refined	Per cwt. ..	1 barrel; 1 cwt. 8 lbs.
„ (for drawback)	.. ..	5 bags / 3 barrels } 13 cwt. 2 qrs. 12 lbs.
„ unrefined	.. ..	
„ bastard (for drawback) ..	.. ..	.. ..
Molasses	.. ..	.. ..
Tobacco (for drawback)	Per lb. ..	.. ..
„ negrohead.	.. ..	3 boxes; 63 lbs.
„ roll	.. ..	.. ..
Sugars	.. ..	2 boxes; 10 lbs.
Pepper	.. ..	.. ..
Raisins	Per cwt. ..	12 boxes; 2 cwt. 1 qr. 26 lbs.
Currants	.. ..	11 jars; 2 cwt. 1 qr. 18 lbs.
Figs	.. ..	.. ..
Prunes	.. ..	.. ..
Plums	.. ..	.. ..
Sundries..	.. ..	.. ..
Surplus stores	.. ..	.. ..

(Signed) "J. MUDIE, *Searcher.*
" , *Collector.*
"SAMUEL WAKEHAM, *Broker,*
"17, *Park Lane.*

1862.

"Examined.
"Cleared, March 4."

The above Victualling Bill is in the usual form, printed, with blanks to be filled up according to the facts in each case. The blanks following the words "passengers or

* Appendix, vol. i, p. 8

troops" and the word "guns," respectively, are equivalent to a statement that the vessel had on board no passengers or troops, and no guns. The words "178 tons" denote the registered tonnage of the ship.

It may be convenient here to explain briefly what is meant by the words "Registry" and "Clearance," and what are the duties of the officers empowered to register ships, and of the officers of the Customs in respect to granting clearances.

Registry signifies the recording, in a book kept for that purpose, of the name of a ship which the owner desires to have recognized as a British ship, together with certain particulars composing a general description of the ship.

The effect of registry is to entitle the ship to use the British flag and assume the British national character. The conditions necessary for obtaining registry, in the case of a ship not already registered, are the production to the Registrar of a certificate by the builder, in a form prescribed by law, and of a declaration (also in a prescribed form) that the ship is British-owned.

It is not the duty of the Registrar to question or ascertain the accuracy of either the builder's certificate or the declaration of ownership. As a ministerial officer, he is bound to accept them, if tendered to him. For false statements in the certificate the builder is liable to a penalty; and for making a wilfully false declaration, the owner is liable to be indicted for a misdemeanour, and to forfeit his interest in the ship.

In Great Britain, as in the United States, the law does not positively require the registration of any vessel. But the disadvantages and disabilities incurred by omitting to procure it are practically sufficient to make the registration of British-owned ships universal.

The register, though in ordinary questions arising under municipal law evidence of the title of the person registered as owner, is not conclusive in a question arising between other parties, nor is it necessarily sufficient proof of the national character of the ship. A transfer to a foreigner, at sea or beyond seas, of a registered British ship, is sufficient to change its ownership and the nationality of the vessel, though not followed by any registry. The law of registry is a part of the law by which British trade and navigation are regulated for fiscal and other purposes; and a ship is registered as British on the voluntary declaration of the person claiming to be owner, without further proof.

The number of vessels which were placed on the registers of the various ports of the United Kingdom in the year 1870 was 1,043, of which 970 were built within the United Kingdom.

Clearance signifies the final official act by which the proper officer of Customs notifies that all has been done which the law requires to be done before the departure of ship and cargo. It is purely for Customs purposes, the main objects being to protect the Revenue, and to secure statistics as to the number of ships and quantity of merchandize entering and leaving British ports. As there are in ordinary times no restrictions or duties on the export of articles of any kind from the United Kingdom, no rigid inspection is exercised by the Customs authorities over the general nature of the goods shipped on board vessels in British ports. The attention of the authorities is mainly directed to the shipment of those articles on which an exemption from import duties otherwise payable, or a remission of import duties already paid, is claimed on the ground of their exportation abroad. The object of the inspection is to ascertain that the goods of this nature stated to be thus exported are really shipped and carried away on board the vessel. The agents who ship such goods furnish the Customs Department with statements in the form of shipping-bills, of the amount and nature thereof, and it is the duty of the examining officer to ascertain that the packages placed on board the vessel correspond with these statements. Before starting on his voyage the master of the vessel is bound to produce a paper called a Content, giving the number and description of any packages of merchandize shipped on board, on which exemption from, or remission of duty is claimed, but merely specifying any other articles as "sundry packages of free goods." The master has also to produce a Victualling Bill, enumerating the amount of stores liable to duty (such as tea, spirits, tobacco, and the like), which he has shipped for the use of his crew. These papers are compared with the shipping-bills and certificates already in the possession of the Customs authorities, and if they are found to tally, a label, signed and sealed by the examining officer and Collector, is affixed to the Victualling Bill and certificates, and these papers are delivered to the master as his Clearance.

It is true that, for statistical purposes, the agents to the master of the vessel are required to furnish to the Customs Department a list, called a Manifest, giving the number and description of all packages of goods, whether liable to duty or not, shipped on board the vessel, and the shipping agents or exporters are also required to furnish specifications of all goods, described by the master on his Content as "Sundry packages of free goods," and subsequently further described in his Manifest; but the law does not require that these

Part V.

The Florida.

particulars should be given before the vessel sails; it is complied with provided they be furnished within six days after she has cleared.

Previously to the year 1867, no penalty was attached by law to the departure of a vessel for foreign ports without a Clearance provided she was in ballast, and had on board no stores except such as were free or had paid duty. Since that date, however, Clearance has been required in these as well as in other cases.

A clearance may not be granted until the master of the ship has declared the nation to which he affirms that she belongs; and a ship attempting to proceed to sea without a clearance may be detained until such a declaration has been made. The officer, however, cannot question, or require proof of, the truth of the declaration. As to the destination of ships sailing from the United Kingdom, the officers of Customs have little or no means of ascertaining this beyond the information which the master or owner gives on entering outwards. It frequently happens that a vessel entered outwards for a specified destination changes her course when at sea, and proceeds to a different destination. There are no means of preventing this.

The number of vessels clearing from ports of the United Kingdom in the course of the year is very great. In the year 1870 the number of clearances granted was 203,031. Of these 13,214 were for vessels sailing from Liverpool, and 17,037 for vessels sailing from London.

On the 22nd March, 1862,* the Oreto sailed from Liverpool. Her master was James Alexander Duguid, a master mariner residing at Liverpool and the person named in the above declaration. Her crew were hired, as appears from the Articles signed by them, for a voyage from Liverpool to Palermo, and thence, if required, to a port or ports in the Mediterranean Sea or the West Indies, and back to a final port of discharge in the United Kingdom, the term not to exceed six months. They were not enlisted in the service of the Confederate States; and it is clear, from what subsequently occurred at Nassau, that they had no intention whatever of entering that service, and had at the time of sailing no knowledge or suspicion that the vessel was intended to be employed as a Confederate ship of war.

The subjoined statements, made in the month of August 1862, for the information of the Commissioners of Customs and of Her Majesty's Government, by officers of the Customs at Liverpool, and by the pilot who took the Oreto out of the Mersey, further show what was the condition of the vessel at the time of her departure, and the precautions taken in respect of her:—†

Statement of Mr. Edward Morgan.

"I am one of the Surveyors of Customs at this port: pursuant to instructions I received from the Collector on the 21st of February in the present year and at subsequent dates, I visited the steamer Oreto at various times, when she was being fitted out in the dock, close to the yard of Messrs. Miller and Sons, the builders of the vessel. I continued this inspection from time to time until she left the dock, and I am certain that when she left the river she had no warlike stores of any kind whatever on board.

"After she went into the river she was constantly watched by the boarding officers, who were directed to report to me whenever any goods were taken on board, but, in reply to my frequent inquiries, they stated nothing was put in the ship but coals.

(Signed) "EDWARD MORGAN, *Surveyor.*"

Statement of Mr. Henry Lloyd.

"In consequence of instructions received from Mr. Morgan, Surveyor, I, in conjunction with the other three Surveyors of the river, kept watch on the proceedings of the vessel Oreto from the time she left the Toxteth Dock, on the 4th March last, till the day she sailed, the 22nd of the same month. On one occasion I was alongside of her, and spoke to Mr. Parry, the pilot, and the chief mate. Neither I nor any of the other River Surveyors saw at any time any arms or warlike ammunition of any kind taken on board, and we are perfectly satisfied that none such was taken on board during her stay in the river.

(Signed) "H. LLOYD, *Examining Officer.*"

Statement on Oath of Mr. William Parry.

"I was the pilot in charge of the ship Oreto when she left the Toxteth Dock on the 4th March, 1862. I continued on board to the day of her sailing, which was the 22nd of the same month, and never left her save on Sunday, when all work was suspended. I saw the ship before the coals and provisions were taken into her; there were no munitions of war in her, that is to say, she had no guns,

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* Appendix, vol. i, p. 161.

† Ibid., p. 34.

carriages, shot, shell, or powder; had there been any on board I must have seen it. I piloted the ship out of the Mersey to Point Lynas, off Anglesea, where I left her, and she proceeded down channel, since which she has not returned. From the time the vessel left the river until I left her she held no communication with the shore, or with any other vessel, for the purpose of receiving anything like cargo on board. I frequently saw Mr. Lloyd, the Tide Surveyor, alongside the ship while in the river.

(Signed) "WM. PARRY."

"Sworn before me, at the Custom-house, Liverpool, this 23rd August, 1862.
(Signed) "S. PRICE EDWARDS, *Collector*."

On the 26th March, 1862, Earl Russell received from Mr. Adams a Note* dated the previous day, which contained the following passage:—

"It is with great reluctance that I am drawn to the conviction that the representations made to your Lordship of the purposes and destination of that vessel were delusive; and that, though at first it may have been intended for service in Sicily, yet that such an intention has long been abandoned, in fact, and that the pretence has been held up only the better to conceal the true object of the parties engaged. That object is to make war against the United States. All the persons thus far known to be most connected with the undertaking are either directly employed by the insurgents of the United States of America or residents of Great Britain, notoriously in sympathy with and giving aid and comfort to them on this side of the water."

Mr. Adams proceeded to enlarge on the dissatisfaction felt in the United States at the circumstance that the trade with blockaded ports was (as he alleged) chiefly carried on from Great Britain and her dependencies, and that this was permitted or not prevented by Her Majesty's Government. He added—

"The duty of nations in amity with each other would seem to be plain not to suffer their good faith to be violated by ill-disposed persons within their borders, merely from the inefficacy of their prohibitory policy. Such is the view which my Government has been disposed to take of its own obligations in similar cases, and such it doubts not is that of all foreign nations with which it is at peace. It is for that reason I deprecate the inference that may be drawn from the issue of the investigation which your Lordship caused to be made in the case of the Oreto, should that vessel be ultimately found issuing safely from this Kingdom, and preying on the commerce of the people of the United States. Not doubting myself the sincerity and earnest desire of your Lordship to do all that is within your power to fulfil every requirement of international amity, it is to be feared that all the favourable effect of it may be neutralized by the later evidence of adverse results. It is no part of my intention to imply the want of fidelity or of good-will in any quarter. I desire to confine myself closely within the pale of my duty, a representation of the precise causes of uneasiness between the two countries, and an earnest desire to remove them. Firmly convinced that the actual position of things in connection with the hostile equipment in British waters by no means does justice to the true disposition of Her Majesty's Government, I am anxious to place the matter before your Lordship in such a light as to obtain the evidence more perfectly to establish the truth."

In the above Note Mr. Adams inclosed a copy of a letter received from Mr. Dudley, which was as follows:—

Mr. Dudley to Mr. Adams.

"Sir, "*United States' Consulate, Liverpool, March* 22, 1862.

"The Oreto is still in the river. A flat boat has taken part of her armament to her. A part of the crew of the steamer Annie Childs, which came to this port loaded with cotton, have just left my office. They tell me that Captain Bullock is to command the Oreto, and that four other officers for this vessel came over with them in the Childs. The names of three are Young, Low, and Maffit or Moffit, the fourth was called Eddy; the two first are lieutenants, and the two last-named midshipmen. They further state that these officers during the voyage wore naval uniforms; that they came on the Childs at a place called Smithville, some 20 miles down the river from Wilmington; that it was talked about and understood by all on board that their object in coming was to take command of this vessel, which was being built in England for the Southern Confederacy. They further state that it was understood in Wilmington, before they left, that several war vessels were being built in England for the South. As they were coming up the river in the Childs, as they passed the Oreto, she dipped her flag to the Childs. I have had this last from several sources, and the additional fact that the same evening after the arrival of this steamer, a dinner was given in the Oreto to the officers who came over in the Childs. I understand she will make direct for Madeira and Nassau.

"I have, &c.
(Signed) "THOMAS H. DUDLEY."

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* Appendix, vol. i, p. 4.

The above Note was dated on the third day, and received (with its inclosure) on the fourth day, after the Oreto had put to sea.

In answer to the above Note, Earl Russell, on the 27th March, 1862, wrote to Mr. Adams as follows:—

*Earl Russell to Mr. Adams.**

"Sir, "*Foreign Office, March* 27, 1862.

"Upon receiving your letter of the 25th instant, I immediately directed that the Treasury and Customs Department should be requested to take such steps as may be necessary to ascertain whether the Oreto is equipped for the purpose of making war on the United States, and, if that fact can be proved, to detain the vessel.

"The charge that nearly all the assistance now obtained from abroad by the persons still in arms against the Government of the United States, and which enables them to continue the struggle, comes from Great Britain and its Dependencies, is somewhat vague. I believe the greater part of the arms and ammunition sent from this country to America during the struggle has gone to the United States.

"I agree with you in the statement that the duty of nations in amity with each other is not to suffer their good faith to be violated by ill-disposed persons within their borders, merely from the inefficacy of their prohibitory policy. But it is, at the same time, a duty not to punish persons on suspicion without any proof of their evil intent. It is not the custom of this country to deprive any person of liberty or property without evidence of some offence. If such evidence can be obtained, the laws are sufficient to prevent the accomplishment of their evil designs against friendly nations.

"You have not yourself hitherto furnished me with evidence that any vessel has received a hostile or warlike equiment in British waters, which has been afterwards used against the United States. The care that was taken to prevent the warlike equipment of the Nashville in British waters, must be familiar to your recollection.

"With regard to co-operation with the policy of the United States in respect to the blockade, I must remind you that Great Britain has abstained, as far as possible, from complaints of the irregularity of the blockade which has been instituted. Her Majesty's Government have been mindful of the suddenness of the danger with which the United States were threatened; of the inadequacy of the naval force then at the disposal of the Government; and of the great difficulty of blockading a coast of 3,000 miles.

"But beyond forbearance, and a liberal interpretation of the law of nations in favour of the United States, Her Majesty's Government cannot go. If by co-operation with the policy of the United States is meant, either taking part in the civil war still raging, or imposing restraints on the Queen's subjects unknown to international law, I cannot undertake that Her Majesty's Government will adopt either of those courses. It would be an unheard of measure to prohibit merchants from sending ships to sea destined to the southern ports. Should such ships attempt to violate the blockade, capture and condemnation are the proper penalty of such attempts; no authority can be found for any other.

"But while these attempts are made on the one side, the United States' Government have willingly received in the ranks of their army, British subjects who violate the Queen's Proclamation in order to serve against the Confederates. Nay, the law of the United States, by which parents can prevent the enlistment of their sons, being minors, has been set aside to the prejudice of British subjects, the fathers and mothers of thoughtless lads of 16 or 17 years of age.

"These evils are, perhaps, inseparable from the unhappy contest now carried on in America. I can only trust it may have a speedy termination, suitable to the reputation of the United States, and conducive to the future happiness of all the inhabitants of a country so lately prosperous and united.

"I am, &c.

(Signed) "RUSSELL."

Information that the Oreto had put to sea had not at this time been received by Her Majesty's Government.

On the 8th April, 1862, Earl Russell sent to Mr. Adams the following Report of inquiries made respecting the Oreto by order of the Commissioners of Customs:—†

"*Custom-House, April* 4, 1862.

"Your Lordships having referred to us the annexed letter from Mr. Hammond, transmitting, by desire of Earl Russell, a copy of a further letter, addressed by the United States' Consul at Liverpool to Mr. Adams, the United States' Minister at this Court, in which it is again affirmed that the Oreto is being fitted out as a vessel of war for the Southern Confederacy, and various statements are reported in support of that assertion, and requesting that your Lordships would instruct this Board to give directions that the Oreto might be viligantly watched, and that, if any armament prohibited by the Foreign Enlistment Act should be discovered, the vessel might be at once detained;

"We report—

"That, on the receipt of your Lordship's reference, we directed our Collector at Liverpool immediately to inquire into the further allegations, made in regard to the Oreto, and to govern himself in accordance with the instructions contained in Mr. Hammond's letter, and, having received the Report of the Collector, we find that the vessel in question was registered on the 3rd ultimo, in the name of John Henry Thomas, of Liverpool, as sole owner; that she cleared on the following day for Palermo and

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* Appendix, vol. i, p. 6. † Ibid., p. 7.

Jamaica in ballast, but did not sail until the 22nd, the day on which the American Consul's letter is dated, having a crew of fifty-two men, all British, with the exception of three or four, one of whom only was an American. She had no gunpowder, nor even a signal gun, and no colours, saving Maryatt's Code of Signals and a British ensign, nor any goods on board except the stores enumerated on the accompanying copy of her victualling bill.

"With regard to the statements in the letter of the Consul, the Collector further reports that it is clear the passengers brought by the Annie Childs, the vessel therein mentioned, which has recently arrived from one of the Southern States, were not intended to form any portion of the crew of the Oreto, inasmuch as they were still in Liverpool, and that the dipping of the ensign on board the latter vessel on the arrival of the Annie Childs, as far as the Collector had been enabled to ascertain, was intended as a compliment to one of the Cunard steamers and another vessel which saluted the Annie Childs on her arrival, the masters of the several vessels being known to one another.

(Signed) "THO. F. FREMANTLE."
"GRENVILLE C. L. BERKELEY."

This Report was accompanied by a copy of the ship's Victualling Bill.

On the 28th April, 1862, the Oreto* arrived at Nassau, as appears by the subjoined entry in the books of the Revenue Department of the Colony of the Bahamas:—*

"*Inwards.*

(No. 48.)

"In the British steamer Oreto, Duguid, master, from Liverpool; 178 tons; 12 feet; 52 men.

Ballast.

Nassau, New Providence, April 28, 1862.

On the 29th April she quitted the part of the harbour which is adjacent to the town of Nassau, and proceeded to Cochrane's Anchorage, a station distant from the town about fifteen miles, measuring by the course usually taken by vessels of heavy draught. It was stated that this was done on the advice of the pilot, and for the reason that there was not room for her in the harbour. On the 9th May, 1862, the Governor of the Bahamas received from Mr. Whiting, United States' Consul at Nassau, the following letter:—†

"Sir, "*United States' Consulate, Nassau, N. P., May* 9, 1862.

"I have the honour to communicate to your Excellency several facts of importance, deeming it to be my duty so to do, as Representative of the Government of the United States of America.

"The tug Fanny Lewis, which arrived here from Liverpool on the 6th instant, has on board, I am credibly informed by letters received from that port, a large quantity of powder for the rebel States of America, or for the so-called Confederate States.

"On the 28th ultimo the steamer Oreto also arrived off this port from Liverpool, and now lies at Cochrane's Anchorage, where, it is believed, and so reported by many residents here, that she is being prepared and fitted out as a Confederate privateer, to prey on the commerce of the United States of America.

"I inclose for your Excellency's perusal a slip from the Wilmington North Carolina paper of the 20th April.

"I cannot but think that your Excellency will consider it proper that some inquiry should be made, to ascertain how far the vessels alluded to are preserving the strict neutrality so earnestly enjoined by Her Majesty's late Proclamation, and I am confident that I pay but a deserved tribute to your Excellency's high character when I express my firm belief that no illegal steps will be allowed to those who seek to subvert the Government which I have the honour to represent.

"I am, &c.

(Signed) "SAML. WHITING, *United States' Consul.*"

Mr. Whiting was on the same day informed in answer by the Colonial Secretary, that the Governor would cause inquiries to be made into the circumstances alleged in his (Mr. Whiting's) letter. The letter was at the same time referred, by order of the Governor, to the Attorney-General of the Colony, who reported as follows:—‡

"Assuming the cargo of the Fanny Lewis to be such as is stated by the United States' Consul, it is nevertheless one that can legally be imported here from the United Kingdom, and its future presumed destination does not invest it with any character of illegality which calls for, or would authorize any action with respect to it on the part of the Executive or other authorities of the Colony.

"2. With respect to the Oreto, the Consul's allegation is to the effect that it is believed and reported by many residents here that she is being prepared and fitted out where she now lies at Cochrane's Anchorage, which is within the limits of the port of Nassau, as a Confederate privateer. Now if such is the fact, an offence against the Foreign Enlistment Act has been committed, all parties implicated in which are liable to be criminally proceeded against for misdemeanor, and the vessel may be seized by any naval or revenue officer; but to justify proceedings either against the parties or the vessels, the matter must not rest on repute or belief alone, but the authorities must have positive facts to

* Appendix, vol. i, p. 58. † Ibid., p. 14. ‡ Ibid., p. 15.

ground their proceedings on, and unless the Consul can adduce such, or they can be obtained through other channels, no steps can be taken either for the arrest of the vessel, or those on board of her.

(Signed) "G. C. ANDERSON."

On the 28th May, 1862, Commander McKillop, commanding Her Majesty's ship Bulldog, wrote to the Governor as follows —:*

"Sir, "*Bulldog, Nassau, May* 28, 1862.

"Several steamers having anchored at Cochrane's Anchorage, I sent an officer yesterday to visit them and muster their crews, and ascertain what they were and how employed.

"The officer reports that one steamer, the Oreto, is apparently fitting and preparing for a vessel of war; under these circumstances, I would suggest that she should come into the harbour of Nassau to prevent any misunderstanding as to her equipping in this port, contrary to the Foreign Enlistment Act, as a privateer or war vessel.

"I am, &c.

(Signed) "H. F. MCKILLOP."

No facts were furnished by Commander McKillop in support of the statement, that the Oreto was "apparently fitting and preparing for a vessel of war." On receiving this communication the Governor requested Commander McKillop to take such steps as he might think best for ascertaining the true character of the Oreto and the nature of her equipment; and if he should be convinced that she was really a man of war or privateer arming herself there, to concert measures for bringing her down into the part of the harbour adjacent to the town, or else to remove his own ship to Cochrane's Anchorage and there watch her proceedings from day to day.

Early in the month of June 1862, the consignees of the vessel, who were a mercantile firm at Nassau, applied to the Receiver-General (the proper officer for that purpose) for permission to load her for an outward voyage to St. John's, New Brunswick.

Her Majesty's Government is informed and believes that during the blockade of the Confederate States it was a common practice for ships leaving the port of Nassau, with the intention of endeavouring to run their cargoes into the blockaded ports, to clear for St. John's, New Brunswick, and many of them took in their outward cargoes at the anchorages adjacent to the harbour of Nassau. In the application itself, therefore, there was nothing peculiar; but, in consequence of the suspicions which had arisen about the ship, the Receiver-General, before granting the usual permission to load, referred the matter to the Governor, and it was brought by him before the Executive Council of the Colony on the 4th June, 1862, when the following Order was made:—†

"*June* 4, 1862.

"At an Executive Council his Excellency the Governor, with the advice of the Board, was pleased to make the following Order:—

"1. That the Oreto, if practicable, should take in her cargo within the port of Nassau.

"2. That if however it be found impracticable, from the depth of water in port or otherwise, that she cannot conveniently take in her cargo within the port, then that she be permitted to do so at Cochrane's Anchorage, under the direct supervision of officers of the Revenue Department, to be specially appointed for the purpose.

"3. That in consequence of the suspicions which have arisen respecting the character of the Oreto, it is advisable that a British vessel of war should remain at Cochrane's Anchorage, in the immediate vicinity of the Oreto, while she is taking in cargo, and to prevent such vessel being detained at the anchorage an inconveniently long time there be imposed as a condition, for the permission for the Oreto to load without the port, that she complete her lading at Cochrane's Anchorage, within a period to be designated by the Chief Officer of the Revenue Department.

"His Excellency was further pleased to direct that a copy of the foregoing Order be furnished to the Receiver-General and Treasurer, and the Commander of Her Majesty's ship Bulldog, respectively, for their information and guidance."

On the same 4th June, 1862, the United States' Consul sent to the Governor the subjoined letter and inclosure:—‡

"Sir, "*United States' Consulate at Nassau, N.P., June* 4, 1862.

"I have the honour to inform your Excellency that I am in receipt of a communication from one of the crew (in prison here), of the steamer Oreto, now lying at Cochrane's Anchorage, a copy of which I inclose.

"May I request your Excellency to inform me if any steps have been taken by the Colonial Government to ascertain the true character of the Oreto, the service for which she is intended, and if her longer stay at Cochrane's Anchorage, under all the circumstances disclosed, is in accordance with Her Majesty's late Neutrality Proclamation.

"I am, &c.

(Signed) "SAML. WHITING, *Consul*."

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* Appendix, vol. i, p. 16. † Ibid., pp. 19 and 53. ‡ Ibid. p. 19.

(Inclosure.)

Mr. Jones to Mr. Whiting.

"Sir, "*Nassau Prison, June* 4, 1862.

"The ship I am from is the Oreto, built by W. C. Miller, in Liverpool, after the model of the English Navy gun-boats, with magazine, shot-lockers, ports and bolts for twenty guns. Everything is rigged, and ready for mounting; even all the articles necessary for seamen, such as hammocks, bedding, kettles and pans, with three years' provisions. In short, she is a perfect man-of-war. Captain, James Duguid; chief officer, William Duggin; second officer, — Hudson; I, Sir, was third officer and boatswain; the chief steward and purser, who refused duty, are in jail here.

* * * * * * *

"Yours, &c.
(Signed) "EDWD. JONES."

The Consul renewed his representations on the 12th June.*

In conformity with the above resolutions of the Executive Council, the Commander of the Bulldog proceeded to Cochrane's Anchorage, put one of his officers in charge of the Oreto, and placed his own ship near her. On the 7th June she was removed by the consignees to the part of the harbour close to Nassau.

On the 8th June, 1862, the Governor received from Commander McKillop a letter dated the 6th,† reporting that he had visited and examined the Oreto; that she was fitted for war purposes, and had fittings at variance with the character of a merchant-vessel, but had on board no guns or ammunition.

On the 9th June the consignees began to load the vessel with cargo, part of which consisted of arms and ammunition, including some boxes of shells. On the morning of the 10th, however, the cargo which had been put on board was discharged, the consignees having obtained leave to land it, and to clear the vessel in ballast for the Havana.

Commander M'Killop quitted Nassau on the 9th June, and was succeeded, as Senior Naval Officer at the port, by Commander Hickley, of Her Majesty's ship Greyhound. On the 10th June, Commander Hickley went on board the Oreto, but, being informed that she had cleared for the Havana in ballast and was to sail shortly, forbore at that time to examine her. On the 13th, he again went on board of her, and sent in a Report to the Governor, which was as follows:—‡

"*Greyhound, Nassau, New Providence, Bahamas,*
"Sir, "*June* 13, 1862.

"On going on board the Oreto this morning, the captain informed me that the crew had refused to get the anchor up until they could be certain as to where the ship was going, as they did not know what might become of them after leaving port, and that the Oreto was a suspicious vessel. I then proceeded round the decks to note her fittings &c., and to ascertain whether she had any warlike stores on board for her own equipment, and I have the honour to make the following Report:—

"That the Oreto is in every respect fitted as a man-of-war, on the principle of the dispatch gun-vessels in Her Majesty's Naval Service.

"That she has a crew of fifty men, and is capable of carrying two pivot-guns amidships and four broadside both forward and aft, the ports being made to 'ship and unship,' port bars, breeching, side tackle, bolts, &c.

"That she has shell-rooms, a magazine and light-rooms, and 'handing-scuttles' for handing powder out of the magazine, as fitted in the naval service, and shot boxes for Armstrong shot, or shot similar to them. Round the upper-deck she has five boats (I should say), a ten-oared cutter, an eight-oared cutter, two gigs, and a jolly-boat, and davits for hoisting them up,—her accommodation being in no respect different from her similar class of vessel in the Royal Naval Service.

"And on my asking the captain of the Oreto, before my own officers and three of his own, whether she had left Liverpool fitted in all respects as she was at present, his answer was, 'Yes, in all respects," and 'that no addition or alteration had been made whatever.'

"In witness of this Report, and ready to testify to its correctness, we, the Undersigned, affix our names.

(Signed) "H. D. HICKLEY, *Commander.*
"JNO. L. GILBY, *Lieutenant.*
"C. S. CARDALE, *Lieutenant.*
"B. B. STUART, *Master.*
"P. O. M. PRESGRAVE, *Assistant Paymaster.*
"E. B. GIDLEY, *Gunner.*
"E. EDWARDS, *Carpenter.*
"W. ROSKILLY, *Gunner's Mate.*
"JOHN LEWAN, *Seaman Gunner.*"

The Attorney-General of the Colony, being called upon to advise the Governor upon this Report, gave his opinion that it would not justify the detention of the vessel.

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* Appendix, vol. i, p. 21. † Ibid., p. 20. ‡ Ibid., p. 23

Part V.

The Florida.

On the 15th June some of the crew of the Oreto came on board the Greyhound, and stated to Commander Hickley that they had left the Oreto because they were not able to ascertain her destination, and that she was endeavouring to ship another crew. Commander Hickley thereupon seized the vessel, but, on the morning of the 17th, released her, the Attorney-General being still of opinion that there was not evidence sufficient to justify a seizure. Notwithstanding this opinion, however, the seizure was forthwith (namely, on the morning of the 17th June) renewed, with the sanction of the Governor, that officer holding that, after the statements which had been made to him by Commander Hickley, it was right and proper to submit the case to judicial investigation. The sanction of the Governor was given on the 17th June, and proceedings were, by his direction, forthwith instituted in the Vice-Admiralty Court of the Colony (which was and is the Court having by law jurisdiction in matters of this nature) for the condemnation of the vessel.

On the trial of the case, the following witnesses were examined on behalf of the Crown:—

Wynn Fely James Duggan, Chief Officer of the Oreto.
William Porter, seaman of Oreto.
Peter Hinson, seaman of Oreto.
Charles Ward, steward of Oreto.
Walter Irving, fireman of Oreto.
John Quinn, fireman of Oreto.
Thomas Robinson, fireman of Oreto.
Daniel Hamy, coal-trimmer of Oreto.
Commander Hickley; of Her Majesty's ship Greyhound.
Thomas Joseph Waters, a master mariner in the Merchant Service.
Lieutenant Cardale, Royal Navy.
Bay Beaufoy Stuart, master and pilot of Her Majesty's ship Greyhound.

One of the firm of merchants who were consignees of the vessel at Nassau, the master under whom she had made her outward voyage, and other witnesses, were examined for the defence. The consignee, in the course of his evidence, made the following statements on oath:—*

"We (meaning his firm) had the sole direction and management of the Oreto. I know of no person but Captain Duguid having any control over the Oreto. . . . In placing the cargo on ooard the Oreto, it was distinctly understood as cargo. I stated to the Receiver-General that it was cargo only, that we intended to ship a full load by that vessel. We were fully aware that we could not ship such goods otherwise than as cargo, unless committing a breach of the Foreign Enlistment Act; and had we been ordered to do it, we should have handed the consignment over to some one else. No act was done by authority of Henry Adderley and Co. [the witness's firm] with the intent that the vessel should be employed as a cruizer."

On cross-examination, he stated as follows:—

"The vessel was consigned to us by Messrs. Fraser, Trenholm, and Co., of Liverpool. She was consigned to us as a merchant-vessel, and we considered her as such. No instruction in the first instance was given to us, except the general instructions of shipping cargoes by all their vessels to Messrs. W. and R. Wright, St. John's, New Brunswick, on account and risk of J. R. Armstrong, of Liverpool. Mr. John Lowe, I think, brought a letter of introduction from Mr. Trenholm to the firm. I do not know whether Mr. Lowe was in any way interested in the Oreto. I do not recollect Mr. Lowe being mentioned in any correspondence which we received from Fraser, Trenholm, and Co. We never had any transactions with Mr. Lowe in regard to the Oreto. She remained here several weeks before any attempt was made to ship cargo in her. We thought we should receive some instructions from our friends about her, but we did not. The shipping of the cargo on board the Oreto was performed by us under our general instructions. I am not prepared to say whether the vessel was actually going to St. John's, New Brunswick."

The master, James Alexander Duguid, gave evidence as follows:—†

"I am master of the Oreto. . . . The owner of the Oreto, I believe, is named Mr. Thomas. I took my instructions from Fawcett, Preston, and Co., the agents. . . . I arrived here at the latter end of April. I went to Cochrane's Anchorage, and communicated with H. Adderley and Co. as the agents of the vessel representing my owners in England. I had no instructions, when leaving England, who the agents of the vessel were; but on my arrival here I understood who they were. Mr. Lowe had a letter, and told me that Messrs. Adderley and Co. were the agents of the vessel, and they would enter the ship. I remained at Cochrane's Anchorage seven weeks; we were waiting orders

* Appendix, vol. i, p. 47.

† Ibid., p. 48.

from the agents, who were waiting orders from the owners at home. . . . The shell was taken on board by the direction of the agents. I never thought that it was intended for the vessel, neither did I know that it was. . . . I had not intent, nor would I do so, to use the Oreto to commit hostilities against any Power or State."

On cross-examination he said—*

"I received my instructions from Messrs. Fawcett, Preston, and Co. as to the voyage. They were written. [The instructions were produced in Court.] In the conversation referred to in the letter dated 22nd March, 1862, I proposed going to Nassau instead of Havana. No instructions were given to me as to the ultimate destination of the vessel after she reached Nassau. . . . I had no knowledge whatever, when the vessel cleared for Havana, that she was ultimately bound to the Confederated States of America. I have no knowledge whether the vessel was to return to Europe or not; I have no knowledge one way or the other. I have no knowledge whatever that she had been sold or agreed to be sold to any persons in the Confederate States."

With respect to the crew of the vessel, the consignee gave evidence as follows:—†

"We had some difficulty with the crew. They set up a plea that the vessel, not having touched at Palermo, there had been a deviation of the voyage, and therefore they claimed their discharge. We demurred to this, but afterwards agreed to pay them their wages up to date, and give them a bonus of 5*l.* and pay their passage to England if they would not remain in the ship. This they refused to accept, stating that, from the several visits of the officers of the man-of-war on board the vessel, they considered she was of a suspicious character, and that they would not go in her unless the Governor and Captain Hickley guaranteed their safety. Some accepted the terms that were offered. In consequence of this they were summoned before the police magistrate, and the case was brought under his adjudication. They elected to take their discharge. I was present at the time they then and there agreed to quit the ship. They then obtained leave to go on board for their clothes. The men were discharged by the magistrate. In consequence of this we got a shipping-master to ship another crew for the Oreto. I think there were fifteen or sixteen new hands then shipped. They received the usual advance. It was our intention to send her immediately to sea. I had arranged with the pilot to take her out the following morning (Sunday); they, however, missed the tide, the crew not having come on board. The vessel was again seized that day. The crew we shipped then left the Oreto. I have not seen them since, and all the advance that we paid is lost."

As to the same matter, the master stated as follows:—‡

"Two mornings following, previous to this seizure (I mean on Friday and Saturday), I ordered my crew to get the vessel under way, but they refused, stating that I had deceived them once, and that they would not believe what I told them again. I told them she was cleared for Havana, and bound there as far as I knew. They still continued to refuse to work, and said that they would not believe anything that I told them. In consequence of this I sent warrants on board for them. They all appeared before the Magistrate. They said that they would not proceed in the vessel unless they were guaranteed that they would be safe from any American cruizers. They then said that they would take their discharge, and the whole of them took their discharge."

On the 2nd of August, 862, the Judge of the Court pronounced judgment in the case, reviewing at considerable length the evidence which had been produced on both sides, and stating what, in his opinion, was the effect and value of that evidence. At the beginning, he said—§

"To support the libel, it is necessary that proof should be given—

"1st. That the aforesaid parties, having charge of the Oreto, while the vessel was within the jurisdiction of the Vice-Admiralty Court of the Bahamas, attempted to equip, furnish, and fit her out as a vessel of war;

"2ndly. That such attempt was made with the intent that she should be employed in the service of the Confederated States of America; and,

"3rdly. That such service was to cruize and commit hostilities against the citizens of the United States of America. Witnesses have accordingly been produced to prove that the Oreto is constructed for and fitted as a war-vessel; that acts have been done in her, since she came to Nassau, which constitute an attempt to equip, fit, and arm her as a vessel of war. That from certain conversations which were overheard between the master of the vessel and a person who came out passenger in her, and from certain acts done by this person, there is proof that she was intended for the service of the Confederated States of America, and to cruize against the citizens of the United States."

After recapitulating the substance of the evidence, he said—‖

"The question now to be decided is, whether, upon a careful consideration of the evidence, there appears proof or circumstantial evidence amounting to reasonable proof, that a violation of the provi-

* Appendix, vol. i, p. 50. † Ibid., p. 46. ‡ Ibid., p. 49
§ Ibid., p. 39. ‖ Ibid., p. 50

sions of the Foreign Enlistment Act has been committed by the parties having charge of the Oreto. First, by attempting, by any act done since she came into this Colony, to fit or equip the Oreto as a vessel of war. Secondly, by making such attempt for the purpose of fitting and equipping her as a vessel of war for the service of the Confederated States of America, to cruize and commit hostilities against the citizens of the United States of America. I have already said that what took place before the vessel came here can only be received as elucidatory or explanatory of what has occurred since that time. Two facts have been proved, both of which, it has been contended, are violations of the Act. One is that, while the vessel lay at Cochrane's Anchorage, some blocks were stropped in such a manner that they might be used as gun-tackle blocks, and that they were so called in an entry in the ship's log-book, and by some of the crew. The other, that a number of boxes containing shells were put in the ship after she came into this harbour, and were taken out again."

He arrived at the conclusion that there was no sufficient evidence of any act done, or attempt made, since the Oreto had come to the Colony, to fit out or equip her as a vessel of war.

He was further of opinion that, although the vessel might not be calculated to carry the ordinary bulky cargo of merchant-ships, she was capable of carrying a considerable quantity of some kinds of cargo, and that it was not improbable that a vessel of her description might be used for running the blockade.

He was also of opinion that the evidence connecting her with the Confederate States, as a vessel to be used in their service to cruize against the United States, was "slight."*

"It rests entirely on her connection with a gentleman named Lowe, who came out passenger in her, and some evidence has been given from which it may be inferred that this Mr. Lowe is connected in some way with the Southern States. He is said by some of the crew to have exercised some control over the Oreto. This is denied on oath by Mr. Harris and Captain Duguid. But assuming it to be true, and assuming also that Mr. Lowe is connected with the Confederated States, no one can state that Mr. Lowe, or his employers, if he have any, may not have engaged the Oreto for the purpose of carrying munitions of war, which we have seen she is well capable of doing, and this would not have been an infringement of the Act under which she is libelled. But the evidence connecting the Oreto with the Confederated States rests almost entirely on the evidence of the steward, Ward, whose testimony I have already explained my reasons for receiving with much doubt."

The Judge, therefore, made a decree for the restoration of the vessel to the master claiming on behalf of the alleged owner, John Henry Thomas—

"Under all the circumstances of the case, I do not feel that I should be justified in condemning the Oreto. She will, therefore be restored.

"With respect to costs, although I am of opinion that there is not sufficient evidence of illegal conduct to condemn the vessel, yet I think all the circumstances of the case taken together seem sufficient to justify strong suspicion that an attempt was being made to infringe that neutrality so wisely determined upon by Her Majesty's Government. It is the duty of the officers of Her Majesty's Navy to prevent, as far as may be in their power, any such infringement of the neutrality. I think that Captain Hickley had *primâ facie* grounds for seizing the Oreto; and I therefore decree that each party pay his own costs."

The assumption, on which the Judge appears to have proceeded, that evidence of acts done before the Oreto arrived at the Bahamas could not be received, unless for the purpose of explaining or elucidating acts done after her arrival, may have been erroneous, and Her Majesty's Government believes that it was so. Her Majesty's Government believes that in a proceeding *in rem* against a ship, to enforce a forfeiture for an alleged infringement of the statute, a Court, wherever locally situate within the dominions of the Crown, might lawfully receive and adjudicate upon evidence of such infringement, wherever the act or acts constituting it might have been committed.

The decision, however, although founded in part on an assumption that Her Majesty's Government considers open, at least, to grave doubt, was the judgment of a Court of competent jurisdiction, and was, as such, binding on the executive authorities of the Colony. And it is further to be observed, that proof of acts done out of the limits of the Colony, had it been tendered and admitted, could not have altered the decision of the Court, unless it had supplied evidence also of an unlawful intention.

Her Britannic Majesty's Government, on the 31st July, 1862, received from the Governor of the Bahamas intelligence of the measures taken in respect of the Oreto.

The seizure of the vessel was approved by Her Majesty's Government, and the Governor was informed that she should be detained until instructions could be given as to what further process should be instituted.† The Lords Commissioners of the Treasury

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* Appendix, vol. i, p. 52.

† Ibid., pp. 29, 31, *et seq.*

were at the same time requested to consider the propriety of sending an officer of Customs from Liverpool who could give evidence of the facts which occurred in regard to the Oreto at that place, and inquiries with that view were forthwith made by the Commissioners of Customs.

Intelligence of the Decree of the Vice-Admiralty Court of the Bahamas, ordering the restoration of the Oreto, was received by Her Majesty's Government on the 16th September, 1862.

The Oreto was released, in obedience to the Decree of the Court; and on the 7th August, 1862, she was cleared at the Nassau Custom-house as a merchant-vessel with cargo, for St. John's, New Brunswick, as appears from the subjoined copy of the manifest of cargo, extracted from the books of the Revenue Department of the Bahamas:—*

"*Outwards.*

Manifest of Cargo on board British steamer Oreto, A. L. Read, master, for St. John's N.B. 178 tons; 12 feet water; 52 men.

"4 kegs white lead.
"3 barrels oil.
"2 puncheons rum.
"6 cases ½ and ¼ boxes tobacco.
"4 barrels sugar.
"4 bags coffee.
"28 barrels bread.
"8 cheese.
"3 kegs butter.
"8 bags pepper.
"4 boxes candles

(Signed) "J. L. READ.

"*Nassau, New Providence, August* 7, 1862."

On or about the 7th August the Oreto sailed from Nassau. Of the subsequent history of this vessel, from the time of her leaving Nassau to that of her arrival in a port of the Confederate States, Her Britannic Majesty's Government has no knowledge; but it has been informed and believes that she was subsequently armed for war by a Captain Maffit, who had formerly held a commission in the United States' Navy, and was then a commissioned officer in the service of the Confederate States; that she was then commissioned as a ship-of-war of the Confederate States, under the command of the said Maffit, and her name changed from "the Oreto" to "the Florida;" and that, after keeping the sea for a few days, she put in at the port of Cardenas, in Cuba, where (or at the Havana) she remained for nearly a month. On the 4th September the vessel arrived at and entered the port of Mobile in the Confederate States, which was then blockaded by three United States' ships of war. She remained in port for upwards of four months. She was repaired and refitted, and shipped a crew, and, in January 1863, was sent to sea from Mobile, under the command of Maffit, as a Confederate States' ship-of-war.

The United States' Consul at Nassau, after the departure of the vessel, and on the 8th September, 1862, wrote to the Governor as follows:—†

"*United States' Consulate, Nassau, New Providence,*
"Sir, "*September* 8, 1862.

"I have the honour to inform your Excellency that I have good authority for stating that the schooner Prince Alfred, of Nassau, took the Oreto's armament from this port and discharged the same on board that steamer at Green Cay, one of the Bahamas. That the Oreto afterwards left Green Cay with the Secession flag flying at her peak. That the Prince Alfred has returned to this port, and now lies at Cochrane's Anchorage, and I am credibly informed that her Captain is again shipping men to be sent to the Oreto, in direct contravention of the Foreign Enlistment Act.

"I earnestly urge upon your Excellency the propriety of instituting some inquiry into these matters, and of preventing acts so prejudicial to the interests of the friendly Government which I have the honour to represent.

"I have, &c.
(Signed) "SAMUEL WHITING."

The Colonial Secretary replied as follows:—

"*Colonial Office, Nassau, September* 9, 1862.
"Sir,

"In reply to your letter of the 8th instant, directed to the Governor, I am instructed by his Excellency to inform you that, if you feel assured that you have sufficient credible evidence to substantiate your allegation, and will put your evidence into the hands of the Attorney-General, his Excellency will direct a prosecution against the Captain of the Prince Alfred, or others who may have been guilty of violating the Foreign Enlistment Act.

"But his Excellency has no authority to take any steps against the Oreto, which is out of his Excellency's jurisdiction.

"I have, &c.
(Signed) "C. R. NESBITT, *Colonial Secretary.*"

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* Appendix, vol. i, p. 58.

† Ibid., p 87.

No evidence whatever in support of the allegations of the Consul appears to have been furnished by him, and no facts were produced on which a prosecution could be founded.

The subsequent history of the Florida, so far as it is known to Her Majesty's Government from official Reports and other sources, is as follows.

On the 25th January, 1863, the Florida came into the harbour of Nassau, where she remained twenty-six hours; and on the 24th February she put in at Barbados, where she remained about two days (being detained for twenty-four hours at the request of the United States' Consul in order to allow time for the sailing of a United States' merchant-vessel then in the harbour). Each of these Colonies had been repeatedly visited by United States' ships of war. It was alleged that in each of them some advantage or indulgence which United States' vessels had not enjoyed had been granted to the Florida. But it was shown by the Governors of those Colonies that this assertion was entirely erroneous, and that no advantage was conceded to the Florida which had not been before granted to cruizers of the United States. It appeared, however, that both the United States' ship San Jacinto and the Confederate ship Florida had been permitted to obtain coal at Barbados within a less time than three months after they had respectively coaled at another British Colony, the Commander of each vessel having alleged that his supply of coal had been exhausted by stress of weather. In consequence of this the following despatch was addressed by Her Majesty's Secretary of State for the Colonies to the Governor of Barbados; and instructions, substantially to the same effect, were sent to the Governors of the other British Colonies in the West Indies:—*

"Sir, "*Downing Street, July* 16, 1863.

"I have received and had under my consideration your despatch of the 7th March, giving an account of certain communications which have passed between yourself and Rear-Admiral Wilkes, of the United States' Navy.

"You were quite right in refusing to enter into correspondence with that officer upon the matter adverted to in his despatch of the 5th March. On this and other occasions it has become evident that interviews and explanations such as you accorded to Rear-Admiral Wilkes were made the pretext for placing on record charges more or less direct against officers of Her Majesty. And I think that, as the Governor of one of Her Majesty's Colonies owes no explanation of his conduct to an officer of the United States' Navy, it will be prudent hereafter to avoid such explanations as far as the rules of courtesy will allow. It is the wish of Her Majesty's Government that matters of complaint should in general be discussed between the two Governments concerned rather than between any subordinate officers.

"With regard to the issue of coal to the war-vessels of the belligerents, you have, I think, allowed yourself too much liberty in giving the 'special permission' to take in fuel contemplated in Her Majesty's Proclamation. Coal, in the opinion of Her Majesty's Government, ought not to be supplied to a vessel of war of either belligerent except in such quantity as may be necessary to carry such vessel to the nearest port of her own country (or, of course, any nearer port), and this, I will add, without reference to the question whether the ports of that country are or are not under blockade. In case of such blockade it will rest with the officer in command to seek some more convenient destination. If within the period prescribed by the Proclamation a vessel thus furnished with coal in one of Her Majesty's possessions should apply for a second supply in the same or another Colony, the application may be granted if it is made to appear that, owing to real necessities arising from stress of weather, the coal originally given has been prematurely exhausted before it was possible that the vessel could, under existing circumstances, have reached the destination for which she coaled.

"But if it should be the case that the vessel has not, since taking in coal, been *bonâ fide* occupied in seeking her alleged destination, but has consumed her fuel in cruizing, the coal should not be replenished under the terms of the Proclamation. Such a case is not one to which 'special permission' referred to in that Proclamation was intended to apply.

"Her Majesty's Government are of opinion that the regulations of the Proclamation thus interpreted should be strictly adhered to without any arbitrary concession to either belligerent. It is by such a course that misunderstandings and complaints of partiality will be most certainly avoided. An unauthorized concession to one belligerent, it may be safely assumed, will not be accepted by those to whom it is made as a justification of a similar concession in an opposite direction.

"I approve of your having communicated to the officers administering the Government of the other West Indian Islands the fact that certain Federal and Confederate vessels of war had called at Barbados.

"I shall instruct the Governors of the other islands to follow the same course, communicating in all cases the name of the vessel, its alleged destination, and the date of receiving the coal, and the quantity allowed to be placed on board.

"I have, &c.
(Signed) "NEWCASTLE."

On the 8th May, 1863, the Florida entered the harbour of Pernambuco, and received permission to remain there for twenty-four hours. Captain Maffit stated to the President of the Province that the machinery of his ship was out of order and required repair; and

* Appendix, vol. i, p. 102.

he obtained, on this ground, leave to stay for three or four days. The machinery was repaired on shore, and he sailed on the 12th May.

The United States' Consul at Pernambuco addressed a remonstrance to the authorities protesting against any accommodation being granted to a vessel which he insisted should be regarded as piratical.

The President replied that there had been no infringement of the letter or spirit of international law in the course which had been pursued by the authorities; that he could not agree with the Consul in regarding the Florida as piratical, and could not admit his protest.

On the 16th July, 1863, the Florida came into the port of St. George's, Bermuda, her Commander having previously applied for and obtained leave to enter for the purpose of procuring coals and making necessary repairs. Being unable to obtain coal from private persons, Captain Maffit requested to be allowed to purchase some from the Government stores, and he requested also that permission might be given him to have his ship repaired in the Government Dockyard. These requests were refused, as appears from the following correspondence :—*

Mr. Walker to Governor Ord.

"Sir, "*St. George's, July* 18, 1863.

"At the request of Captain Maffit, commanding Confederate States' steamer Florida, I have the honour to inform your Excellency that, on his application at the dockyard this morning for coals, he was informed by Captain Glasse that, under his present instructions, he did not feel authorized to furnish the Florida with the small amount even which Captain Maffit required.

"As the Florida must therefore of necessity be detained at this port as a vessel in distress until the arrival of coals which are daily expected, Captain Maffit begs me to inquire of your Excellency if the privilege will be accorded to him of proceeding to the dockyard for the purpose of having effected some repairs to machinery and hull of ship, which are of essential importance, and which cannot be effected in the port of St. George's.

"I have, &c.
(Signed) "NORMAN STEWART WALKER."

Governor Ord to Mr. Walker.

"Sir, "*Mount Langton, July* 19, 1863.

"I have the honour to acknowledge the receipt of your letter of the 18th instant, informing me, at the request of Captain Maffit, of the Confederate States' steamer Florida, that, having applied yesterday at the dockyard for coals, he was informed by Captain Glasse, R.N., that he did not feel authorized to furnish the Florida with the small amount she required, and further stating that, as the Florida must therefore of necessity be detained at this port as a vessel in distress until the arrival of coals, which are daily expected, Captain Maffit begs you to inquire whether the privilege will be accorded to him of proceeding to the dockyard for the purpose of having effected some repairs to machinery and hull of ship which are of essential importance, and which cannot be effected in the port of St. George's.

"Having referred this application to Captain Glasse, Superintendent of the dockyard, I have the honour to acquaint you that he informs me that he does not feel himself at liberty to allow of any repairs to the machinery or hull of the Confederate States' steamer of war Florida being effected in Her Majesty's dockyard.

"In making this communication I have to express a hope that Captain Maffit may yet find it in his power to obtain for his vessel such supplies of coal, and such necessary repairs as will enable her to proceed without delay to her destination, but I must at the same time point out that Her Majesty's instructions (with a copy of which Captain Maffit was supplied on the 16th instant) are very stringent as to the limitation of the stay in British waters of vessels of war of the United States or Confederate States, and that it is necessary that whatever may be required to enable the Florida to take her departure from these islands should be provided in the shortest possible period. If, however, Captain Maffit should find it impossible to procure at the present time whatever may be requisite for this purpose, I must request that he will at once proceed with the Florida to Grassy Bay, there to remain until his departure from the Colony is rendered practicable.

"I have, &c.
(Signed) "H. ST. GEORGE ORD."

Mr. Walker to Governor Ord.

"Sir, "*St. George's, July* 20, 1863.

"Since the communication which I had the honour to address to your Excellency on Saturday evening last, Captain Maffit has been informed that there is a large quantity of coals at this port belonging to the Commissariat Department.

"He, therefore, requests me, in his great emergency, to apply, through your Excellency, to the proper officers, for a quantity sufficient to carry his vessel to some other coaling depôt.

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* Appendix, vol. i, p. 109.

"Captain Maffit will be happy to have the opportunity of paying for the coals in coin immediately, or of having them returned in kind, within two or three weeks, at any point in the island which may be indicated.

"I have, &c.
(Signed) "NORMAN STEWART WALKER."

Governor Ord to Mr. Walker.

"Sir, "*Mount Langton, July* 20, 1863.

"I have the honour to acknowledge the receipt of your letter of this day's date, requesting, on behalf of Captain M... it, Confederate States' steamer Florida, that he may be permitted to take from a large quantity of coal belonging to the Commissariat Department at St. George's, a quantity sufficient to carry his ship to some other coaling depôt.

"In reply, I have to inform you that the coal in question is not under my control, but under that of Colonel Munro, the Commandant of the Troops.

"I have, &c.
(Signed) "H. ST. GEORGE ORD."

Colonel Munro refused to allow coal to be supplied to the Florida from the Commissariat Department. She subsequently obtained some from a vessel which arrived at the Colony from Halifax.

The Commandant of the fort at Bermuda had, on the arrival of the Florida there, consented to exchange salutes with her. This act was disapproved by Her Majesty's Government, for the reason that, whilst Great Britain had recognized the Confederate States as a belligerent, she had not recognized those States as independent or their Government as a sovereign Government.

On the 23rd August, 1863, the Florida arrived at Brest, having, two days before, taken and destroyed at sea a United States' merchant-ship bound from Liverpool to New York. The following Report of what then occurred at Brest was subsequently furnished to Her Britannic Majesty's Government by Her Majesty's Consul at Brest, and is believed by Her Britannic Majesty's Government to be true and correct :—*

"My Lord; "*Brest, September* 22, 1871.

"I have the honour to acknowledge the receipt of your Lordship's despatch of the 12th instant, instructing me to furnish you with a Report containing all the particulars of which I could obtain information respecting the proceedings at this port of the Confederate cruizer Florida, in 1863-64.

"In obedience to your Lordship's commands I have now the honour to report that the Florida arrived in Brest Bay at 11 o'clock on the morning of the 23rd of August, 1863; and her Commander having declared that she entered the port in order that her engines and copper sheathing might be repaired, and for purposes of general refitting, she obtained free pratique on the evening of the following day,

"Captain Maffit, the Commander of the Florida, was informed by the Admiral of the Port (Préfet Maritime), Vice-Admiral Count de Gueyton, that he was at liberty to effect the repairs of the ship and provide her with coal and provisions, the same as any merchant-ship.

"Captain Maffit then selected as his agents Messrs. Massurier and Sons; but to this selection an objection was raised by Count de Gueyton, on account of their not being sworn brokers; and, at his suggestion, M. Aumaître, sworn broker and interpreter, was appointed agent.

"Later, a M. Puquet du Belley arrived from Paris as the special agent of the Confederate States for France. He, however, did not remain here long, but confirmed the appointment of M. Aumaître.

"The commercial resources of Brest proving insufficient to effect the repairs of the Florida, application was made to the Port Admiral to allow her to enter the Government dockyard, and permission for her to do so was granted, it being stipulated that all expenses should be reimbursed by the agent, M. Aumaître, and that her powder-magazine should be cleared before entering the dock. To effect the latter operation, a Government barge was furnished for the purpose of removing the ammunition; and this barge was, later, moored in the bay.

"On the 9th of September, 1863, the Florida entered the Government dock, and remained there for general repairs for a period of about five weeks.

"On the 17th of the same month the Federal corvette Kearsarge put into Brest for a supply of coal; but this appears simply to have been a pretext, as she took but a small quantity on board. She, however, remained at anchor in the bay, with fires banked, until the 30th of October, when she proceeded to sea, Queenstown being reported as her destination.

"The Federal corvette, however, returned to her anchorage at Brest on the 27th of November. and remained there until the 4th of December, when she again left Brest, and cruized off Cherbourg until, as I am informed, her Commander ascertained that the Confederate vessel Georgia, then repairing at that port, would not be ready for sea for some time; whereupon the Kearsarge returned to Brest Bay, and anchored there on the 11th of the same month.

"Meanwhile the Florida had completed her repairs in the dockyard, and afterwards took moorings

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* Appendix, vol. i, p. 126.

in the merchant harbour of Brest, where she was slowly refitted. On the 27th of December she was moved to the roadstead, and there anchored within half a mile of the Kearsarge.

"At half-past 1 o'clock on the afternoon of the 29th of December the Kearsarge again left Brest for an unknown destination.

"It appears that some of the mechanism of the more heavy guns of the Florida had never been regulated, and her Commander desiring to have this done, an application was made to the Port Admiral for permission to land the guns for that purpose; but this was at once and positively refused, on the ground that such an act might be interpreted as an equivalent to allowing a reinforcement of arms.

"But, it appears, her small-arms were allowed to be landed, in order to be repaired by a gunmaker, of Brest, named Kock; this permission was granted, on the agent, M. Aumaître, giving a guarantee to the authorities of the Custom-house that they should be reshipped on board the Florida.

"No arms or ammunition were furnished to the Florida while here.

"Through M. Aumaître, the agent, I have ascertained that thirty-five seamen claimed and obtained, their discharge from the Florida here; that they were, in part, replaced by others chiefly natives of Belgium, Germany, Italy, and Southern Austria, brought to Brest by railway direct from Paris, in numbers never exceeding four at a time, and that they were quietly sent on board in similar numbers.

"The Federal corvette Kearsarge reappeared in Brest waters on the 3rd of January, 1864; and, after steaming about the bay to within a mile of the town, again proceeded to sea.

"The Confederate cruizer Florida, being ready for sea, left Brest between 9 and 10 o'clock on the evening of the 9th of February, 1864, in charge of a pilot; and at a distance of about thirty miles from this port, passed through the dangerous passage Du Raz, inside the Saints, landing the pilot at Audierne.

"On the 18th of February, the Kearsarge coming from Cadiz, reappeared in Brest Roads; but her Commander, finding that the Florida had left, departed the following day for an unknown destination.

"During the stay of these two ships of war in the port of Brest, the French ship of the line Louis XIV, was placed in a position to watch their movements; the commanding officer having orders, in the event of one of these vessels quitting the port, to prevent the other from leaving until after the expiration of twenty-four hours.

"I am informed that the agent, M. Aumaître, paid the authorities of the dockyard for repairs to the Florida, 135,000 francs, and that the total sum expended on her here exceeded 300,000 francs, which amounts were later reimbursed by Mr. Taylor, the Paymaster of the ship.

"The Florida, on her arrival at Brest, was commanded by Captain Maffit, who was later replaced by Captain Barney, who was again relieved by Captain Morris, under whose command she finally left this port.

"In conclusion, I beg leave to state, that your Lordship's despatch of the 12th instant, calling for this Report, having been received by Captain Clipperton, then Acting Consul, the day before I took charge of the Consulate, he had already collected valuable information on the subject to which it refers; and I am, therefore indebted to him for a portion of that furnished in the present despatch. I would, however, add that, before availing myself of such information, I had it verified by persons competent to do so.

"I have, &c.
(Signed) "HARRY RAINALS."

The United States' Minister at Paris, Mr. Dayton, addressed several remonstrances to the French Government against the facilities afforded at Brest to the Florida, but without success. An account of these remonstrances and the answers given to them was furnished by him to his Government, and is contained in the following extracts from his despatches, published by order of the Government of the United States:—

"I have this day sent out a note to the Minister, informing him that I had learned that the Florida had come into Brest, not for repairs of machinery only, but for coal, which had been denied to her at Bermuda, from which port she had come. The fact is, that as she is a good sailing vessel, and has crossed the Atlantic, as I believe, principally by that means, neither coal nor machinery is necessary to her safety, although a great convenience, doubtless, in enabling her to prey upon our commerce. It may well be doubted whether the rule which limits aid in such cases, to what is called for by necessity and humanity, applies at all to her case."—*Mr. Dayton to Mr. Seward*, 25th August, 1863.

"I have to-day had a conversation with M. Drouyn de l'Huys upon the subject. He says they are much annoyed that the Florida should have come into a French port. But having recognized the South as belligerents, they can only deal with the vessel as they would deal with one of our ships of war under like circumstances. They will give her so much aid as may be essential to her navigation, though they will not provide her with anything for war. I stated that she was a good sailer, and really needed nothing in the shape of repairs to machinery, &c., to enable her to navigate. He said that if she were deprived of her machinery, she would be *pro tanto* disabled, crippled, and liable, like a duck with its wings cut, to be at once caught by our steamers. He said it would be no fair answer to say the duck had legs, and could walk or swim. But he said that, in addition to this, the officers of the port had reported to the Government that the vessel was leaking badly; that she made water at so much per hour (given the measurement), and unless repaired she would sink; that this fact, coming from their own officers, he must receive as true. They said nothing, however, about her copper being damaged, but reported that she needed caulking and tarring, if I understood the French word rightly. I then asked him if he understood that the rule in such cases required or justified the grant of a Govern-

ment dock or basin for such repairs, especially to a vessel like this, fresh from her destructive work in the Channel; remarking that, as she waited no judicial condemnation of her prizes, when repaired in this Government dock, she would be just at hand to burn other American ships entering or leaving Havre and other French ports. He said where there was no mere commercial dock, as at Brest, it was customary to grant the use of any accommodations there to all vessels in distress, upon the payment of certain known and fixed rates; that they must deal with this vessel as they would with one of our own ships, or the ships of any other nation, and that to all such these accommodations would be granted at once."—*The same to the same*, 3rd September, 1863.

"On the 19th instant I received a note from M. Drouyn de l'Huys requesting to see me on the next day (yesterday) in reference to certain matters of business. I, of course, attended at the Foreign Office at the time named. He then informed me that it had been reported to him that the United States' steam-ship Kearsarge, Captain Winslow, now in the port of Brest, kept her steam constantly up with the view, as supposed, of instantly following and catching, if possible, the Florida upon her leaving that port; and that France, having resolved to treat this vessel as a regularly commissioned ship-of-war, could not and would not permit this to be done. He said that the rule which requires that the vessel first leaving shall have twenty-four hours the start must be applied. To avoid the difficulty which he said must inevitably follow a disregard of this rule by Captain Winslow, he requested me to communicate to him the determination of this Government, and apprise him of the necessity of complying with the rule. Inasmuch as nothing was to be gained by inviting the application of force, and increased difficulties might follow that course, I have communicated to Captain Winslow the letter of which I herewith send you a copy.

"M. Drouyn de l'Huys furthermore informed me that this Government, after much conference (and, I think, some hesitation), had concluded not to issue an order prohibiting an accession to the crew of the Florida while in port, inasmuch as such accession was necessary to her navigation. They had made inquiries, it would seem, and said they had ascertained that the seventy or seventy-five men discharged after she came into Brest were discharged because the period for which they had shipped had expired. He said, furthermore, that it was reported to him that the Kearsarge had likewise applied for some sailors and a pilot in that port, as well as for coal and leave to make repairs, all of which had been, and would be, if more were needed, cheerfully granted.

"I told him I was quite confident the Kearsarge had made no attempt to ship a crew there, and that as respects a pilot, that stood on ground peculiar to itself, and had no reference to the general principle.

"The determination which has been reached by the French authorities to allow the shipment of a crew, or so large a portion of one, on board of the Florida while lying in their port, is, I think, wrong, even supposing that vessel a regularly commissioned ship of war. I told M. Drouyn de l'Huys that, looking at it as a mere lawyer, and clear of prejudices which my official position might create, I thought this determination an error. He said, however, that in the conference they had reached that conclusion unanimously, although a majority of the Ministry considering the question were lawyers."—*The same to the same*, 21st October, 1863.

The Florida remained in the harbour of Brest, repairing and refitting, during nearly six months, from the 23rd August, 1863, till the 9th February, 1864.

On the 13th April, 1864, the Florida touched at Bermuda, but remained only a very short time, anchoring on the afternoon of that day and putting to sea the same evening.

On the 18th June, 1864, she again arrived at Bermuda, and obtained permission to remain during five days for the purpose of making necessary repairs. The circumstances which occurred, and the course pursued by the authorities at Bermuda, are set forth in the subjoined despatch from the Acting Governor:—*

"Sir, "*Bermuda, July* 7, 1864.

"I have the honour to report the following particulars connected with a recent visit to these islands of the Confederate States' steamer Florida. On Saturday the 18th June, the Florida arrived at the outer anchorage, and Commander Morris sent one of his officers to report his arrival and ask permission to take in coal, and permission also to effect some repairs. I was informed that no supplies or coal had been furnished to the Florida in any English port for ten months past, and that it would not be possible to ascertain the full extent of the repairs necessary until the vessel came into port. I then gave permission for the Florida to be brought into St. George's Harbour for twenty-four hours, exclusive of Sunday; the vessel came in accordingly on Sunday, and, shortly after his arrival, Commander Morris waited upon me and delivered me a letter asking that the repairs which were found necessary might be carried out at Her Majesty's Dockyard. I immediately transmitted this letter to Vice-Admiral Sir James Hope, who declined to allow any repairs to be carried out in the dockyard, but offered to send competent officers on board the Florida to ascertain the extent of the repairs necessary. Commander Morris was very glad to obtain the opinion of these officers, and the knowledge was necessary to me, in order that I might judge what time should be granted. The Admiral sent the Flag Lieutenant, Chief Engineer, and two Assistant Engineers on board the Florida, and they reported on the vessel.

"1st. 'She can proceed to sea with such repairs as can be made good here, which, as far as we are able to judge, will require five days for one man, viz., a diver for two days and a fitter for three days, or three complete days in all.

"2nd. 'She can proceed to sea with safety in her present state under steam, but under sail

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* Appendix, vol. i, p. 132.

is unmanageable with her screw up in bad weather, and her defects aloft (cross-trees) render main topmast unsafe. This could be made good in two days.'

"I consulted personally with Sir James Hope, and gave Commander Morris permission to remain five working days in St. George's to complete the repairs. I also furnished Commander Morris with printed extracts of some portion of the Circular despatch dated the 16th July, 1863, informing him of the regulations under which alone he could be allowed to take in coal. He asserted that Mobile was the first Confederate port he expected to visit, and reports that he took in about eighty tons of coal. The five working days expired on the 27th June, and the Florida quitted St. George's Harbour on that day, but was seen off the island on the following day and also on the morning of the 29th. I had the advantage of the advice of Sir James Hope until he quitted Bermuda in the Duncan for Halifax, and our views were completely in accord. During this visit the conduct and demeanour of Commander Morris were all that I could wish, and he appeared very desirous to avoid the least infringement of the instructions laid down in Her Majesty's Proclamation. Since that time, however, I cannot think Commander Morris has behaved quite properly. On the 28th June the Florida was seen off the islands all day, and also on the morning of the 29th. Again she was signalled off the south side on the 2nd July, about 7·30 A.M., and on the afternoon, about 4 P.M. I received a verbal message to say that two men, supposed to be deserters, had been found on board, and requested that I would send some persons off to identify them in a steam-tug that was going off to visit the Florida. The departure of this tug was delayed until after sunset, and the Fort Adjutant then perceived that she was going to tow out a barge full of coal. This officer immediately told Mr. Black, who is temporarily acting as agent for the Confederate States, that he ought not to take out coal without the Governor's permission. Mr. Black then sent me a note, of which I inclose a copy, asking for permission to take out fifteen tons of coal to the Florida in consequence of her having returned to Bermuda for the purpose of bringing back the two deserters. To this I immediately replied that I could not sanction any further issue of coal. The Fort Adjutant was present when my letter was delivered to Mr. Black, and at that moment the tug-steamer started off to the Florida with the barge in tow. Mr. Black stated that she had gone without his orders, and that he would follow her in a gig. This he did, and I am informed that about half the coals had been already taken on board before Mr. Black had arrived in the gig, and the remainder was brought back. The deserter belonging to the Royal Engineers was placed on board and handed over. It will be observed in Mr. Black's note that he stated the deserters were discovered in twenty-four hours. The Florida remained in sight for at least thirty-six hours after her departure, and the deserter was not landed for five days.

"Commander Morris never applied to me for permission to take the coal, I suppose, being fully aware that the Circular despatch of the 16th July, 1863, prohibited coal being supplied to vessels such as his, which 'had consumed their fuel in cruizing' as he had done in sight of these islands.

"Mr. Black, who belongs to the Southern States, states that he sent the coal at the request of Commander Morris. The Florida then immediately left the islands, and has not since been seen.

"I beg to annex a copy of a printed extract from the Circular despatch of the 16th July, 1863, which I forwarded to Commander Morris.

"I have, &c.
(Signed) "WILLIAM MUNRO."

With reference to these circumstances the following correspondence passed between Mr. Adams and Earl Russell:—*

Mr. Adams to Earl Russell.

"My Lord, "*Legation of the United States, London, August* 19, 1864.

"It is with very great regret that I find myself compelled to call the attention of your Lordship to the abuse made of the neutrality of the Island of Bermuda by the vessels under the direction of the insurgents in the United States, in making it a base for hostile operations against the commerce of a friendly nation. I have the honour to submit to your consideration the copy of an extract from a Report of Mr. Allen, Consul of the United States at that place, to the Secretary of State, in which he makes certain statements respecting the reception there of the gun-boat known under the name of the Florida, and her subsequent proceedings, which appear to be directly in violation of the regulations heretofore laid down by Her Majesty's Government. I beg permission to remind your Lordship of the remonstrances which were promptly made, a short time since, in the case of one of the vessels of the United States, for proceedings of a far less exceptionable character.

"Not doubting the disposition of Her Majesty's Government to do full justice in the premises, I pray, &c.

(Signed) "CHARLES FRANCIS ADAMS."

Inclosure.

Mr. Allen to Mr. Seward.

"Sir, "*United States' Consulate at Bermuda, June* 30, 1864.

"The Florida, after remaining in port nine days, went to sea last Monday evening, but has not been far from land. She is in sight to day from the hills, about six miles off. She boards all vessels

* Appendix, vol. i, p. 134.

approaching these islands. She received all the coal and supplies they wanted. The coal was taken from the ship Storm King, C. L. Hobson, of Richmond, agent.

"I am, &c.

(Signed) "C. M. ALLEN, *Consul.*"

Earl Russell to Mr. Adams.

"Sir, "*Foreign Office, September* 5, 1864.

"In reply to your note of the 19th ultimo respecting the proceedings of the Florida at Bermuda, I have the honour to inform you that Her Majesty's Government have received reports on the same subject from Her Majesty's Colonial and Naval authorities, and that, after due consideration of the same, they are of opinion that although some disposition was manifested by the Commander of the Florida to evade the stringency of Her Majesty's Regulations, the most commendable strictness and diligence in enforcing those Regulations was observed on the part of the authorities, and that no substantial deviation, either from the letter or from the spirit of those Regulations was permitted to, or did, take place.

"I have further the honour to inform you that Her Majesty's Government consider that the conduct of the Lieutenant-Governor of Bermuda on the occasion in question was perfectly proper.

"I am, &c.

(Signed) "RUSSELL."

On or about the 5th October, 1864, the Florida entered the port of Bahia. On this occasion the following correspondence passed between the United States' Consul at that place and the President of the Province of Bahia :—*

The United States' Consul to the President of the Province.

"To his Excellency Antonio Joaquim da Silva Gomes, President of the Province of Bahia.

"*Consulate of the United States of America, Bahia,*

"Sir, "*October* 5, 1864, 9 A.M.

"This morning a steamer anchored in this port bearing the flag adopted by those who are involved in the rebellion against the Government of the United States of America, and I am informed that the said vessel is the Florida, which is engaged in capturing vessels navigating under the flag of the United States of America, and in destroying them by making bonfires of them and their cargoes.

"The vessel in question is not commissioned by any recognized Government whatever, and her officers and crew are composed of persons of various nationalities, who are not subject to any international or civilized law, and are consequently not entitled to the privileges and immunities conceded to vessels navigating under the flag of a civilized nation. I therefore protest, in the name of the United States of America, against the admission of this vessel to free practice, by which she might be enabled to supply herself with coal, provisions, tackle, or utensils of any kind whatever, or receive on board any persons whatever; finally, against any assistance, aid, or protection might be conceded to her in this port, or in any other belonging to this province.

"I likewise claim that the piratical cruizer which, in combination with the pirate Alabama, violated the sovereignty of the Imperial Government of Brazil, by capturing and destroying vessels belonging to citizens of the United States of America, within the territorial waters of Brazil, near the island of Fernando de Noronha, in April 1863, be detained with all her officers and crew, in order to answer for so flagrant a violation of the sovereignty of the Government of Brazil and of the rights of citizens of the United States within the jurisdiction of the Brazilian Government.

"I avail, &c.

(Signed) "THOMAS F. WILSON, *Consul of the United States.*"

The President of the Province to Mr. Wilson.

"*Palace of the Government of the Province of Bahia,*

"*October* 5, 1864.

"In a Note, dated this day, Mr. Thomas F. Wilson, Consul of the United States, claims that the steamer Florida, now anchored in this port, shall not be admitted to free pratique, nor obtain permission to provide herself with coal, provisions, supplies, and utensils of any kind whatever, nor receive on board any person whatever; he likewise requests that, as the cruizer, in combination with the Alabama, violated the sovereignty of the Imperial Government of Brazil, by capturing and destroying vessels belonging to citizens of the United States of America, within the territorial waters of the Empire, near the island of Fernando de Noronha, in April 1863, she may be detained, with all her officers and crew, in order to answer for this flagrant violation of the sovereignty of the Government of Brazil and of the rights of citizens of the United States, within the jurisdiction of the Brazilian Government.

"In reply to the Consul, I have to inform him that, as the said vessel belongs to the Confederate States, in whom the Imperial Government recognized the character of belligerents, all the assistance

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* Extracted from the "World" (American journal) of December 2, 1864. (See Appendix, vol. i, p. 146)

equired by humanity may be furnished her, which does in no wise constitute assistance for warlike purposes, as laid down by international law, and does not conflict with that neutrality which this Government studiously seeks to preserve, and has always preserved, in the contest between the States of North America. The Undersigned cannot, therefore, admit the first portion of the claim of the Consul, in the general manner in which it was presented, and particularly in relation to those articles considered as contraband of war, in conformity with instructions issued on that subject by the Imperial Government, and according to which the said vessel will only be permitted to remain in this port for the length of time absolutely indispensable.

"In regard to the second part of his Note, it is my duty to observe to the Consul that, even if it were fully established that the Florida had previously violated neutrality, such a proceeding would scarcely authorize us to refuse her permission to enter the ports of the Empire, and would never warrant us to commit the acts required by the Consul, which would be equivalent to a hostile rupture, without the intervention of the supreme Government of the State, which is alone competent to authorize such a rupture.

"I renew, &c.

(Signed) "ANTONIO JOAQUIM DA SILVA GOMES.

"To Mr. Thomas F. Wilson, Consul of the United States."

Before dawn on the morning of the 7th October, 1864, the Florida was surprised and captured in the port of Bahia by the United States' war-steamer Wachusett, and was carried as a prize to the United States. Shortly after her arrival she sank in Chesapeake Bay, in consequence, as was affirmed, of having sprung a leak during her voyage and of having been injured whilst at anchor by a United States' transport-steamer.

The Government of Brazil protested immediately, in strong terms, against this violation of its sovereignty and of the neutrality of the port; and the United States' Minister at Rio declared, in reply, that the capture of the Florida had not been directed or authorized by himself, condemned the act of the Captain of the Wachusett, and promised that reparation should be made.

Mr. Seward, on learning what had occurred, wrote as follows to the United States' Minister at Rio :—*

Mr. Seward to Mr. Webb.

"Sir, "*Department of State, Washington, November* 11, 1864.

"In the years 1862 and 1863, remonstrances were addressed by us to the Government of Brazil against the policy, different as it was from that of all other American States, in regard to the furnishing of shelter and a haven to pirates who were engaged in depredating upon the peaceful commerce of the United States. The correspondence came to a close without having produced any satisfactory result, and not without leaving a painful presentiment that a continuance of measures so injurious to the United States would sooner or later affect the harmonious relations heretofore existing between the two countries.

"We have just now heard of the capture of the Florida by the Wachusett, at Bahia, and of the consequent hostilities adopted by the Brazilian forces in that port; but we have no particular information of the circumstances which preceded the collision, and our information concerning the transaction itself is incomplete. At the same time, we are absolutely without knowledge of any correspondence that it may have elicited between yourself and the Brazilian Government.

"In this stage of the matter, the President thinks it proper that you should inform the Minister of Foreign Affairs that we are not indisposed to examine the subject upon its merits carefully, and to consider whatever questions may arise out of it, in a becoming and friendly spirit, if that spirit shall be adopted by His Imperial Majesty's Government.

"I am, &c.

(Signed) "WILLIAM H. SEWARD."

With reference to this occurrence, the following correspondence passed between the Brazilian Minister at Washington and the United States' Secretary of State :—†

"*Imperial Legation of Brazil, Washington,*

(Translation.) "*December* 12, 1864.

"The Undersigned, Chargé d'Affaires *ad interim* of His Majesty the Emperor of Brazil, has just received orders from his Government to address himself, without delay, to that of the United States of North America about an act of the most transcendant gravity done on the morning of the 7th day of October last, in the port of the capital of the Province of Bahia, by the war-steamer Wachusett, belonging to the navy of the Union, an act which involves a manifest violation of the territorial jurisdiction of the Empire, and an offence to its honour and sovereignty.

"On the 4th day of the month referred to, there entered that port, where already had been lying for some days the Wachusett, the Confederate steamer Florida, for the purpose, declared by her Commander to the President of the province, to supply herself with alimentary provisions and coal, and to repair some tubes of her machinery.

* Appendix, vol. i, p. 152.

† Ibid., p. 153.

"The President, proceeding in accordance with the policy of neutrality which the Empire resolved to adopt on the question in which unfortunately these States are involved, and, in conformity with the instructions in this respect issued by the Imperial Government on the 23rd of June of the year last past, assented to the application of the Commander of the Florida, and fixed the term of forty-eight hours for taking in supplies, and fixing, in dependence on the final examination by the Engineer of the Arsenal, the determination of the residue of the time which, peradventure, should be deemed indispensable for the completion of the repairs.

"The same authority at once took, with the greatest impartiality, all the measures necessary to avoid any conflict between the two hostile steamers.

"The Florida was placed under cover of the batteries of the Brazilian corvette D. Januaria, on the inshore side, at the request of her Commander, who, reposing on the faith with which, without doubt, the chief authority of the province could not fail to inspire him, considered himself sheltered from any attack of his adversary, and in this confidence not only stayed a night on shore, but gave liberty to a great part of the crew of his vessel.

" It behoves me to say that, as soon as the Confederate steamer entered the port at Bahia, the American Consul, Wilson, addressed to the President a despatch claiming that the Florida should not be admitted to free pratique, and that on the contrary she should be detained, alleging for this, that that vessel had, in concert with the Alabama, violated the neutrality of the Empire by making captures in 1863, near the Island of Fernando de Noronha.

" Such exaggerated pretensions, founded on facts not proven, which had already been the subject of discussion between the Imperial Government and the Legation of the United States, could not be even listened to.

" If the President should have refused the hospitality solicited by the Commander of the Florida he would have infringed not only the duties of neutrality of the Empire, but also those of humanity, considering that steamer, coming from Teneriffe, had been sixty-one days at sea, was unprovided with food, and with machinery in the worst condition.

" Afterwards, the President having stated to the same Consul that he hoped, from his honour and loyalty toward a friendly nation, that he would settle with the Commander of the Wachusett that he should respect the neutrality and sovereignty of the Empire, he was answered affirmatively, the Consul pledging his word of honour. Things were in this condition, the term of forty-eight hours being to expire at 1 o'clock of the afternoon of the 7th, when about dawn of that day, the Commander of the steamer Wachusett, suddenly leaving his anchorage, passed through the Brazilian vessels of war and approached the Florida.

" On passing across the bows of the Brazilian corvette D. Januaria, he was hailed from on board that he must anchor; but, as he did not attend to this intimation, and continued to approach the Florida, at the same time firing a gun and some musketry, the Commander of the Naval Division of the Empire stationed in those waters sent an officer to board the Wachusett and inform her commander that the ships of the division and the forts would open fire upon her if she should attack the Florida. The Brazilian officer was not allowed to make fast to the Wachusett, but the officer of the deck hailed him, saying in reply that he accepted the intimation given, that he would do nothing more, and that he was going to return to his anchorage. The Commander of the Brazilian division then thought proper to ratify his intimation by firing a gun, upon which a complete silence followed between the two ships Wachusett and Florida.

"At the time this was passing, the corvette D. Januaria, on board which the Commander of Division had hoisted his flag, lay head to flood, the steamer Florida anchored B.B., side by side of her, and quite close to the shore, and between her and the corvette the Wachusett stopped her wheels.

"The Commander of Division then observing—notwithstanding the darkness of the night—that the Wachusett, from the position in which she was, kept moving onward and was passing ahead of the corvette, in a course E.B., became convinced that, in fact, she was steering for her anchorage, thus complying with the promise made.

"But a few moments afterwards, perceiving that the Florida was in motion, the Commander discovered that the Wachusett was taking her off in tow by means of a long cable.

" Surprised at such an extraordinary attempt, the Commander immediately set about stopping this, and redressing, at the same time, as behoved him, the offence thus done to the dignity and sovereignty of the Empire.

"But availing himself of the darkness of the night, and of other circumstances, the Commander of the Wachusett succeeded in carrying his prize over the bar, and escaping the just punishment he deserved.

"The Consul, Wilson, preferred to abandon his post, withdrawing on board the Wachusett.

"The Government of His Majesty, as soon as it had official information of the event, addressed to the Legation of the United States at Rio Janeiro a note, in which, giving a succinct exposition of the fact, it declared that it had no hesitation in believing it would hasten to give to it all proper assurances that the Government of the Union would attend to the just reclamation of the Empire as promptly and fully as the gravity of the case demanded.

"In correspondence with this expectative note the worthy Representative of the United States was prompt in sending his reply, in which he declares he is convinced that his Government will give to that of the Empire the reparation which is due to it.

" Such are the facts to which the Undersigned has received order to call all the attention of the Honourable William H. Seward, Secretary of State of the United States.

" The principles of international law which regulate this matter, and in respect of which there is not the least divergence among the most distinguished publicists, are common and known to all. The Undersigned would fail to recognize the high intelligence of the Honourable Mr. Seward, if, perchance, he should enter in this respect into fuller developments.

" He limits himself then only to recall a memorable example, in which these principles, invariably

sustained by the United States, had entire application. In 1793, the great Washington then being President of the United States, and the illustrious Jefferson Secretary of State, the French frigate l'Embuscade captured the English ship Grange, in Delaware Bay, thus violating the neutrality and the territorial sovereignty of the United States. The American Government remonstrated energetically against this violation, and required from the Government of the French Republic not only the immediate delivery of the captured vessel, but also the complete liberation of all the persons found on board. This reclamation was promptly satisfied. Much more grave, certainly, is the occurrence in the port of the province of Bahia, which makes the subject of the present note. By the special circumstances which preceded and attended it, this act has no parallel in the annals of modern maritime war.

"The Commander of the Wachusett not only gravely offended the territorial immunities of the Empire, passing beyond the laws of war by attacking treacherously, during the night, a defenceless ship, whose crew, much reduced, because more than sixty men were on shore with the Commander and several officers, reposed unwary beneath the shadow of the protection which the neutrality of the Empire guaranteed to them; and so open was the violation, so manifest the offence, that the enlightened American press was almost unanimous in condemnation of the inexcusable proceeding of Commander Collins.

"On this occasion, remembering the United States, whose antecedents are well known and noted in history by the energetic defence of and respect for neutral rights, of these unshaken principles, the Undersigned cannot consider the event which occurred at Bahia otherwise than as the individual act of the Commander of the Wachusett, not authorized or approved by his Government, and that it will consequently give to the Government of His Majesty the Emperor the explanations and reparation which, in conformity with international laws, are due to a Power which maintains friendly and pacific relations with the United States.

"The just reclamation of the Imperial Government being thus presented, the Undersigned awaits the reply of the Honourable Mr. Seward, and, fully confiding in his exalted widom, and in the justice of the Government of the United States, he has not even for a moment doubted but that it will be as satisfactory as the incontestable right which aids the Empire, and the vast gravity of the offence which was done to it, may require.

"The Undersigned, &c.

(Signed) "IGNACIO DE AVELLAR BARBOZA DA SILVA.

"His Excellency the Hon. William H. Seward."

Mr. Seward to Mr. Barboza.

"Sir, "*Department of State, Washington, December* 20, 1864.

"I have the honour to acknowledge the receipt of your note, which sets forth the sentiments of the Imperial Government of Brazil concerning the capture of the Florida by the United States' war-steamer Wachusett in the port of Bahia.

"You will, of course, explain to your Government that, owing to an understanding between you and myself, your note, although it bears the date of the 12th December, was not submitted to me until the 21st instant.

"Jealousy of foreign intervention in every form, and absolute non-intervention in the domestic affairs of foreign nations, are cardinal principles in the policy of the United States. You, have, therefore, justly expected that the President would disavow and regret the proceedings at Bahia. He will suspend Captain Collins, and direct him to appear before a court-martial. The Consul at Bahia admits that he advised and incited the captain, and was active in the proceedings. He will therefore be dismissed. The flag of Brazil will receive from the United States' Navy the honour customary in the intercourse of friendly maritime Powers.

"It is, however, not to be understood that this Government admits or gives credit to the charges of falsehood, treachery, and deception which you have brought against the captain and the Consul. These charges are denied on the authority of the officers accused.

"You will also be pleased to understand that the answer now given to your representation rests exclusively upon the ground that the capture of the Florida was an unauthorized, unlawful, and indefensible exercise of the naval force of the United States within a foreign country, in defiance of its established and duly recognized Government.

"This Government disallows your assumption that the insurgents of this country are a lawful naval belligerent; and, on the contrary, it maintains that the ascription of that character by the Government of Brazil to insurgent citizens of the United States, who have hitherto been, and who still are, destitute of naval forces, ports, and Courts, is an act of intervention, in derogation of the law of nations, and unfriendly and wrongful, as it is manifestly injurious, to the United States.

"So, also, this Government disallows your assúmption that the Florida belonged to the aforementioned insurgents, and maintains, on the contrary, that that vessel, like the Alabama, was a pirate, belonging to no nation or lawful belligerent, and therefore that the harbouring and supplying of these piratical ships and their crews in Brazilian ports were wrongs and injuries for which Brazil justly owes reparation to the United States, as ample as the reparation which she now receives from them. They hope, and confidently expect, this reciprocity in good time, to restore the harmony and friendship which are so essential to the welfare and safety of the two countries.

"In the positions which I have thus assumed, the Imperial Government will recognize an adherence to rights which have been constantly asserted, and an enduring sense of injuries which have been the subject of earnest remonstrance by the United States during the last three years. The Government of Brazil is again informed that these positions of this Government are no longer deemed open to argument.

"It does not, however, belong to the captains of ships of war of the United States, or to the

commanders of their armies, or to their Consuls residing in foreign ports, acting without the authority of Congress, and without even Executive direction, and choosing their own time, manner, and occasion to assert the rights and redress the wrongs of the country. This power can be lawfully exercised only by the Government of the United States. As a member of the family of nations, the United States' practise order, not anarchy, as they always prefer lawful proceedings to aggressive violence or retaliation. The United States are happy in being able to believe that Brazil entertains the same sentiments The authorities at Bahia are understood to have unsuccessfully employed force to overcome the Wachusett and rescue the Florida, and to have continued the chase of the offender beyond the waters of Brazil, out upon the high seas. Thus, in the affair at Bahia, subordinate agents, without the knowledge of their respective Governments, mutually inaugurated an unauthorized, irregular, and unlawful war. In desisting from that war on her part, and in appealing to this Government for redress, Brazil rightly appreciated the character of the United States, and set an example worthy of emulation.

"The disposition of the captured crew of the Florida is determined upon the principles which I have laid down. Although the crew are enemies of the United States, and, as they contend, enemies of the human race, yet the offenders were, nevertheless, unlawfully brought into the custody of this Government, and therefore they could not lawfully be subjected here to the punishment which they have deserved. Nor could they, being enemies, be allowed to enjoy the protection of the United States. They will, therefore, be set at liberty, to seek a refuge wheresoever they may find it, with the hazard of recapture when beyond the jurisdiction of this Government.

"The Florida was brought into American waters, and was anchored, under naval surveillance and protection, at Hampton Roads. While awaiting the representation of the Brazilian Government, on the 28th November, she sunk, owing to a leak which could not be seasonably stopped. The leak was at first represented to have been caused, or at least increased, by a collision with a war transport. Orders were immediately given to ascertain the manner and circumstances of the occurrence. It seemed to affect the army and the navy. A Naval Court of Inquiry and also a Military Court of Inquiry were charged with the investigation. The Naval Court has submitted its Report, and a copy thereof is herewith communicated. The Military Court is yet engaged. So soon as its labours shall have ended, the result will be made known to your Government. In the meantime it is assumed that the loss of the Florida was a consequence of some unforeseen accident, which cast no responsibility upon the United States.

"I avail, &c.
(Signed) "WILLIAM H. SEWARD.*

"Senhor Ignacio de Avellar Barboza da Silva, &c."

It has been stated above that the crew of the Florida were shipped principally at Mobile. Representations having been made to Her Majesty's Government to the effect that some of the men who served in her were British subjects, the Law Officers of the Crown were consulted on the question whether proceedings could be instituted against these persons for an infringement of the Foreign Enlistment Act. The Law Officers advised as follows :—†

"We do not think that sufficient evidence has yet been obtained to warrant the institution of proceedings against any of these seamen.

"If it were shown that their enlistment on board the Florida had taken place in England, or within British jurisdiction, they might perhaps have been presumed to be natural-born British subjects, owing obedience at that time to British law; so far, at all events, as to make slight evidence, in confirmation of that presumption, sufficient.

"Next it appears, by the fourth column of the list annexed to Thomson's first affidavit, that, with two exceptions only, all these men took service on board the Florida beyond the limits of British jurisdiction, and by far the greater number of them at Mobile, within the territory of the Confederate States. With respect to the two, Dennis Sullivan and Charles Ballinger, who are alleged, the one to have enlisted at Nassau, and the other to have been shipped at the first (which we suppose means when the ship first sailed from England), no evidence whatever has yet been obtained in support of either of these allegations.

"In the former Report of the Law Officers upon this subject, it was noticed that the first section of the Foreign Enlistment Act, which prohibits the enlistment of British subjects in the belligerent service of any foreign Power, is not limited (as the 7th section as to equipping vessels is) to acts done within British jurisdiction; but that it seems to be intended to apply, and is in its literal terms applicable, to all natural-born British subjects who may enter into the service of any foreign belligerent Power without Her Majesty's license, wheresoever the prohibited act may be done. Assuming this to be the construction and effect of the statute, we apprehend that it would be impossible to procure a conviction under it, in the case of persons who were not resident within British jurisdiction at the time of their taking foreign service, without strict proof that such persons were in fact, at the time of their doing so, natural-born British subjects, owing exclusive obedience, wherever they might be, to the Statute Law of Great Britain; and we think it is at least very doubtful whether those sections of the statute would be held to be applicable to any persons who were naturalized, or even domiciled, at the time of their taking such service, within the territory of the belligerent Power in whose service they enlisted.

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* These two letters, as well as the preceding one, are extracted from the "Daily Morning Chronicle" (American journal), of 31st December, 1864.

† Appendix, vol. i, p. 124.

"Bearing these considerations in mind, we turn to the original depositions of Thompson and Müller, and we find in the former no evidence whatever bearing upon the essential question of the nationality and origin of any of these seamen; while the statements of the latter, as to seventeen of the thirty-three persons who are described as of British origin in the second column of the lists, depend upon admissions or inferences of so loose a character that we do not think any reliance ought to be placed upon them. So far as they rest only on the deponent's belief, they are inadmissible: so far as they prove that certain individuals assocciated on board the ship as Irishmen, and sung Irish songs, &c., they are insufficient; and we think it would be unsafe to trust to the statements of this witness as to the admissions said to have been made by some of the parties (as we count them, by seven only, viz., Considine, Conway, Doris, McNevin, McCabe, McGarroch, and Welch), to the effect that Ireland was their home, their country, or the place of residence of their parents. Every one of these seven persons, it is to be remembered, joined the Florida, according to the lists, at Mobile; and it may serve as some test of the value of this kind of evidence, that the same witness makes very similar statements as to four other seamen (Taylor, Rivers, Grover, and King), with a view to prove them to be either Englishmen or Irishmen, although they are described as native Americans in the second column of the list referred to in his own affidavit.

"The opinion which we had formed, as above expressed, upon the perusal of the original depositions of Thompson and Müller is strongly confirmed by the subsequent affidavit of Thompson, who in that affidavit speaks of admissions made to him by eighteen of these seamen, to the effect that they were born in Ireland, Scotland, or England; and by six others, to the effect either that they were Irishmen, or that Ireland or Liverpool was their home.

"But of these twenty-four persons there are only seven on whose history any further light is thrown by these depositions, and every one of these seven appears to have emigrated from Great Britain or Ireland to the United States previous to the existing civil war, under circumstances from which it is *primâ facie* to be inferred that, at the time when he took service on board the Florida, he was either a naturalized or a domiciled American. Some of them appear to have resided for many years in the United States; and two (Good and Doris) are expressly stated to have acquired the rights of citizens there, and to have voted at Presidential and other elections. With respect to the rest of the crew there is nothing whatever to show that they may not have enlisted under similar circumstances.

"As to all persons so situated, we think that it would be a reasonable construction of the Foreign Enlistment Act to hold that, although they are natural-born subjects of Her Majesty, the word 'foreign,' which pervades the first section of the statute, is not, as regards them, applicable to the service into which they have entered. And even assuming that this construction might not be admitted, we think that it would not be a proper exercise of discretion on the part of the Crown to attempt to put the statute in force, so far as relates to acts done by persons so situated beyond the limits of British jurisdiction, and within the territory in which such persons may have been naturalized or domiciled.

(Signed) "ROUNDELL PALMER.
"R. P. COLLIER.

"*Lincoln's Inn, October* 20, 1863."

Summary.

The Florida was a vessel built at Liverpool by a firm of shipbuilders there, to the order of another Liverpool firm carrying on an extensive business as engineers and ironfounders. She was stated to be ordered for and on account of a person resident at Liverpool, who was a partner in a mercantile house at Palermo, and upon the completion of the vessel this person was duly registered as her owner, on his own declaration. Her builders stated that, according to the best of their information, they believed her to be really destined for Palermo.

She was a vessel built for speed, and her internal fittings and arrangements were not such as are usual in vessels constructed to carry cargo, but were suitable to a ship of war. She was unarmed, however, and had on board no guns, carriages, ammunition, or other warlike stores of any kind.

No facts whatever proving, or tending to prove, that she was intended to cruize or carry on war against the United States were ever, before the departure of the ship, communicated by Mr. Adams or Mr. Dudley to Her Majesty's Government. Mr. Adams alleged, indeed, that advances of money had been made to the firm which ordered the vessel, and to that which constructed her, by the firm of Fraser, Trenholm, and Co., who were believed to have been engaged in blockade-running, and to be employed as agents for the Government of the Confederate States; but this assertion, whether material or not, was not substantiated in any way. These were all the facts respecting the vessel which had been communicated to or were in the possession of Her Majesty's Government previously to and at the time of her departure from England.

It is certain that, had the vessel been seized by Her Majesty's Government, a Court of law would have ordered, and would indeed have been bound to order, the immediate restoration of her, for want of evidence to support a forfeiture. It was not the duty of Her Majesty's Government to seize a vessel which it would have been the duty of a Court of law to restore.

The means and opportunities possessed by Mr. Adams and Mr. Dudley of ascertaining

Part V.

The Florida.

the truth were fully as great as those possessed by Her Majesty's Government. They were, indeed, greater; since Mr. Dudley was the United States' Consul on the spot, in constant communication with Americans of all classes, always on the watch for information, and provided with means of gaining it which could not have been employed by Her Majesty's Government.

The vessel sailed from Liverpool with a clearance for Palermo and Jamaica, unarmed, and with no warlike stores of any kind, under the command of a master belonging to the British mercantile marine, and manned by a crew who were not enlisted for the Confederate service and had no thought or intention of engaging in it, and who afterwards left the ship as soon as they conceived a suspicion that she might be employed in that service.

Although no directions, nor any notice or warning, had or could have been sent to the authorities of Nassau before her arrival there, the vessel was, upon her arrival and whilst she remained there, strictly watched by order of the Governor; a ship of war was placed near to her; she was finally seized by order of the Governor; and proceedings were instituted against her in the proper Court of the Colony. On being released by the Decree of the Court, she sailed from Nassau unarmed, and with a clearance for New Brunswick.

Before committing any hostilities against vessels of citizens of the United States, she sailed for and entered a port of the Confederate States, where she remained during more than four months and was put in condition for war, and enlisted a crew, and from whence she was finally sent out to cruize.

She was commissioned as a ship of war of the Confederate States, and was commanded by an officer commissioned by the *de facto* Government of those States. She was received on the footing of a public ship of war in the ports of neutral nations—Spain, France, and Brazil; and on the same footing, and in the same manner, without favour or partiality, she was received likewise in those ports of the British Colonies which she had occasion to enter.

The United States' ships of war blockading the port of Mobile failed to capture the Florida when she entered it, under circumstances which made the capture so easy of accomplishment, that the officer to whose incapacity the failure was due was dismissed the service. They again failed to capture her when she left the port to commence her cruize. From that time, until her unlawful seizure in the port of Bahia, she was, for a year and nine months, engaged in cruizing, sometimes near the coast of the United States. It does not appear, however, that during all that period she was ever encountered or chased by a United States' ship of war. No serious endeavour, indeed, to intercept or capture her appears to have been made on the part of the Government of the United States.

Her Britannic Majesty's Government cannot admit that, in respect of the Florida, it is justly chargeable with any failure of international duty for which Great Britain owes reparation to the United States.

PART VI.

Statement of Facts relative to the Alabama.

On the 24th June, 1862, Earl Russell received from Mr. Adams the following Note, with an inclosure :—*

Mr. Adams to Earl Russell.

"My Lord, "*Legation of the United States, London, June* 23, 1862.

"Some time since it may be recollected by your Lordship that I felt it my duty to make a representation touching the equipment from the port of Liverpool of the gun-boat Oreto with the intent to make war upon the United States. Notwithstanding the statements returned from the authorities of that place, with which your Lordship favoured me in reply, touching a different destination of that vessel, I have the strongest reason for believing that that vessel went directly to Nassau, and that she has been there engaged in completing her armament, provisioning, and crew for the object first indicated by me.

"I am now under the painful necessity of apprising your Lordship that a new and still more powerful war steamer is nearly ready for departure from the port of Liverpool on the same errand. This vessel has been built and launched from the dockyard of persons, one of whom is now sitting as a Member of the House of Commons, and is fitting out for the especial and manifest object of carrying on hostilities by sea. It is about to be commanded by one of the insurgent agents, the same who sailed in the Oreto. The parties engaged in the enterprise are persons well known at Liverpool to be agents and officers of the insurgents in the United States, the nature and extent of whose labours are well explained in the copy of an intercepted letter of one of them which I received from my Government some days ago, and which I had the honour to place in your Lordship's hands on Thursday last.

"I now ask permission to transmit, for your consideration, a letter addressed to me by the Consul of the United States at Liverpool, in confirmation of the statements here submitted, and to solicit such action as may tend either to stop the projected expedition, or to establish the fact that its purpose is not inimical to the people of the United States.

"Renewing, &c.
(Signed) "CHARLES FRANCIS ADAMS."

The "copy of an intercepted letter" referred to in the above Note, was a paper purporting to be a copy of a letter or report from a Confederate officer of artillery, addressed to some person unknown, and relating to purchases of military supplies for the Confederate army, and to vessels employed in blockade-running. The inclosure was as follows :—

Mr. Dudley to Mr. Adams.

"Sir, "*United States' Consulate, Liverpool, June* 21, 1862.

"The gun-boat now being built by the Messrs. Laird and Co., at Birkenhead, opposite Liverpool, and which I mentioned to you in a previous despatch, is intended for the so-called Confederate Government in the Southern States. The evidence I have is entirely conclusive to my mind. I do not think there is the least room for doubt about it. Beaufort and Caddy, two of the officers from the privateer Sumter, stated that this vessel was being built for the Confederate States. The foreman in Messrs. Laird's yard says she is the sister to the gun-boat Oreto, and has been built for the same parties and for the same purpose; when pressed for a further explanation he stated that she was to be a privateer for the 'Southern Government in the United States.' The captain and officers of the steamer Julia Usher, now at Liverpool, and which is loaded to run the blockade, state that this gun-boat is for the Confederates, and is to be commanded by Captain Bullock.

"The strictest watch is kept over this vessel; no person except those immediately engaged upon her is admitted into the yard. On the occasion of the trial trip made last Thursday week, no one was admitted without a pass, and these passes were issued to but few persons, and those who are known here as active Secessionists engaged in sending aid and relief to the rebels.

"I understand that her armament is to consist of eleven guns, and that she is to enter at once, as soon as she leaves this port, upon her business as a privateer.

"The vessel is very nearly completed; she has had her first trial trip. This trial was successful, and entirely satisfactory to the persons who are superintending her construction. She will be finished

* Appendix, vol. i, p. 177.

in nine or ten days. A part of her powder canisters, which are to number 200, and which are of a new patent, made of copper with screw tops, are on board the vessel; the others are to be delivered in a few days. No pains or expense have been spared in her construction. Her engines are on the oscillating principle, and are 350 horse-power. She measures 1,050 tons burthen, and will draw 14 feet of water when loaded. Her screw or fan works in a solid brass frame casting, weighing near two tons, and is so constructed as to be lifted from the water by steam-power. The platforms and gun-carriages are now being constructed.

"When completed and armed she will be a most formidable and dangerous craft; and, if not prevented from going to sea, will do much mischief to our commerce. The persons engaged in her construction say that no better vessel of her class was ever built.

"I have, &c.
(Signed) "THOS. H. DUDLEY."

The attention of Mr. Adams had been called by Mr. Dudley to the vessel mentioned in the foregoing Note and inclosure, both before she was launched, and immediately afterwards. The launching of this vessel took place on the 15th May, 1862, about a month before the date of Mr. Adams' first representation to Earl Russell. Mr. Dudley's attention had been directed to the vessel in November 1861, immediately on his arrival at Liverpool.

Immediately on the receipt of Mr. Adams' Note, Mr. Hammond, one of the Under-Secretaries of State for Foreign Affairs, wrote, by the direction of Earl Russell, to the Secretary to the Treasury and to the Law Officers of the Crown as follows:—*

Mr. Hammond to the Secretary to the Treasury.

"Sir, "*Foreign Office, June* 25, 1862.

"I am directed by Earl Russell to transmit to you a copy of a letter from the United States' Minister at this Court calling attention to a steamer reported to be fitted out at Liverpool as a Southern privateer, and inclosing a copy of a letter from the United States' Consul at that port, reporting the result of his investigations into the matter; and I am to request that you will move the Lords Commissioners of Her Majesty's Treasury to cause immediate inquiries to be made respecting this vessel and to take such steps in the matter as may be right and proper.

"I am, &c.
(Signed) "E. HAMMOND."

Mr. Hammond to the Law Officers of the Crown.

"Gentlemen, "*Foreign Office, June* 25, 1862.

"I am directed by Earl Russell to transmit to you a letter from the United States' Minister at this Court, calling attention to a steamer reported to be fitting out at Liverpool as a Southern privateer, and inclosing a copy of a letter from the United States' Consul at that port reporting the result of his investigations into the matter; and I am to request that you will take these papers into your consideration and favour Lord Russell with any observations you may have to make upon this question.

"I am, &c.
(Signed) "E. HAMMOND."

Copies of Mr. Adams' Note and Mr. Dudley's letter were sent with each of the two preceding letters for the information of the Lords Commissioners of the Treasury and the Law Officers respectively. Earl Russell, on the same day, wrote as follows to Mr. Adams:—†

Earl Russell to Mr. Adams.

"Sir, "*Foreign Office, June* 25, 1862.

"I have the honour to acknowledge the receipt of your letter of the 23rd instant, calling attention to a steam-vessel which you state is now fitting-out at Liverpool with the intention of carrying on hostilities against the Government of the United States; and I have to acquaint you that I have lost no time in referring the matter to the proper Department of Her Majesty's Government.

"I am, &c.
(Signed) "RUSSELL."

The Law Officers of the Crown on the 30th June, 1862, made their Report as follows:—‡

The Law Officers of the Crown to Earl Russell.

"My Lord, "*Temple, June* 30, 1862.

"We are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th June instant, stating that he was directed by your Lordship to transmit to us a letter from the United

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* Appendix, vol. i, pp. 180, 181. † Ibid., p. 180. ‡ Ibid., p. 181.

States' Minister at this Court, calling attention to a steamer reported to be fitted out at Liverpool as a Southern privateer, and inclosing a copy of a letter from the United States' Consul at that port, reporting the result of his investigations into the matter, and to request that we would take these papers into our consideration and favour your Lordship with any observations we might have to make upon this question.

"In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

"That, if the representation made to Her Majesty's Government by Mr. Adams is in accordance with the facts, the building and equipment of the steamer in question is a manifest violation of the Foreign Enlistment Act, and steps ought to be taken to put that Act in force and to prevent the vessel from going to sea.

"The report of the United States' Consul at Liverpool, inclosed by Mr. Adams, besides suggesting other grounds of reasonable suspicion, contains a direct assertion that the foreman of Messrs. Laird, the builders, has stated that this vessel is intended as a privateer for the service of the Government of the Southern States; and, if the character of the vessel and of her equipment be such as the same Report describes them to be, it seems evident that she must be intended for some warlike purpose.

"Under these circumstances we think that proper steps ought to be taken, under the direction of Her Majesty's Government, by the authorities of the Customs at Liverpool, to ascertain the truth, and that, if sufficient evidence can be obtained to justify proceedings under the Foreign Enlistment Act, such proceedings should be taken as early as possible. In the meantime, Mr. Adams ought, we think, to be informed that Her Majesty's Government are proceeding to investigate the case; but that the course which they may eventually take, must necessarily depend upon the nature and sufficiency of any evidence of a breach of the law which they may be enabled to obtain; and that it will be desirable that any evidence in the possession of the United States' Consul at Liverpool should be at once communicated to the officers of Her Majesty's Customs at that port.

"We have, &c.
(Signed) "WM. ATHERTON.
"ROUNDELL PALMER."

The Commissioners of Customs on the 1st July, 1862, reported to the Treasury as follows:—*

Report by the Commissioners of Customs.

"To the Lords Commissioners of Her Majesty's Treasury.

"Your Lordships having referred to us the annexed letter from Mr. Hammond, the Under-Secretary of State for Foreign Affairs, transmitting, by desire of Earl Russell, copy of a letter from the United States' Minister at this Court, calling attention to a steamer reported to be fitting out at Liverpool as a Southern privateer, and inclosing copy of a letter from the United States' Consul at that port, reporting the result of his investigation into the matter, and requesting that immediate inquiries may be made respecting this vessel, and such steps taken in the matter as may be right and proper;

"We report that, immediately on receipt of your Lordships' reference, we forwarded the papers to our collector at Liverpool for his special inquiry and report, and we learn from his reply that the fitting out of the vessel has not escaped the notice of the officers of this revenue, but that as yet nothing has transpired concerning her which has appeared to demand a special report.

"We are informed that the officers have at all times free access to the building-yards of the Messrs. Laird, at Birkenhead, where the vessel is lying; and that there has been no attempt on the part of her builders to disguise what is most apparent, that she is intended for a ship of war; and one of the surveyors in the service of this Revenue, who had been directed by the collector personally to inspect the vessel, has stated that the description of her in the communication of the United States' Consul is correct, with the exception that her engines are not constructed on the oscillating principle. Her dimensions are as follows:—Length, 211 feet 6 inches; breadth, 31 feet 8 inches; depth, 17 feet 8 inches; and her gross tonnage, by the present rate of admeasurement, is 682 $\frac{31}{100}$ tons. The surveyor has further stated that she has several powder canisters on board, but, as yet, neither guns nor carriages, and that the current report in regard to the vessel is, that she has been built for a foreign Government, which is not denied by the Messrs. Laird, with whom the surveyor has conferred; but they do not appear disposed to reply to any questions respecting the destination of the vessel after she leaves Liverpool. And the officers have no other reliable source of information on that point; and having referred the matter to our solicitor, he has reported his opinion that, at present, there is not sufficient ground to warrant the detention of the vessel, or any interference on the part of this Department, in which Report we beg to express our concurrence. And, with reference to the statement of the United States' Consul, that the evidence he has in regard to this vessel being intended for the so-called Confederate Government in the Southern States is entirely conclusive to his mind, we would observe that, inasmuch as the officers of Customs of Liverpool would not be justified in taking any steps against the vessel unless sufficient evidence to warrant her detention should be laid before them, the proper course would be for the Consul to submit such evidence as he possesses to the collector at that port, who would thereupon take such measures as the provisions of the Foreign Enlistment Act would require. Without the production of full and sufficient evidence to justify their proceedings, the seizing officers might entail on themselves and on the Government very serious consequences.

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* Appendix, vol. i, p. 182.

"We beg to add that the officers at Liverpool will keep a strict watch on the vessel, and that any further information that may be obtained concerning her will be forthwith reported.

(Signed) "THO. F. FREMANTLE.
"GRENVILLE C. L. BERKELEY.

"*Custom-House, July* 1, 1862."

A copy of the Report of the Commissioners of Customs was, on the 4th July, 1862, transmitted by Earl Russell to Mr. Adams, inclosed in the following letter:—*

Earl Russell to Mr. Adams.

"Sir, "*Foreign Office, July* 4, 1862.

"With reference to my letter of the 25th ultimo, I have the honour to inclose a copy of a Report from the Commissioners of Customs, respecting the vessel which you have been informed is being built at Liverpool for the Government of the so-styled Confederate States, and in accordance therewith I would beg leave to suggest that you should instruct the United States' Consul at Liverpool to submit to the Collector of Customs at that port such evidence as he may possess tending to show that his suspicions as to the destination of the vessel in question are well founded.

"I am, &c.
(Signed) "RUSSELL."

Mr. Adams replied as follows:—*

Mr. Adams to Earl Russell.

"My Lord, "*Legation of the United States, London, July* 7, 1862.

"I have the honour to acknowledge the receipt of your note of the 4th instant, covering a copy of the Report from the Commissioners of Customs respecting a vessel presumed by me to be in course of preparation at Liverpool to carry on hostile operations against the United States.

"In accordance with your Lordship's suggestion, I shall at once instruct the Consul of the United States to submit to the Collector of Customs at that port such evidence as he possesses to show that the suspicions he entertains of the character of that vessel are well founded.

"I pray, &c.
(Signed "CHARLES FRANCIS ADAMS."

On the 10th July, 1862, the Collector of Customs at Liverpool received from Mr. Dudley the following letter:—†

The United States' Consul to the Collector of Customs, Liverpool.

"Sir, "*Liverpool, July* 9, 1862.

"In accordance with a suggestion of Earl Russell in a communication to Mr. Adams, the American Minister in London, I beg to lay before you the information and circumstances which have come to my knowledge relative to the gun-boat now being fitted out by Messrs. Laird, at Birkenhead, for the Confederates of the Southern United States of America, and intended to be used as a privateer against the United States.

"On my arrival, and taking charge of the Consulate at Liverpool in November last, my attention was called by the Acting Consul and by other persons to two gun-boats being or to be fitted out for the so-called Confederate Government: the Oreto, fitted out by Mr. Miller and Messrs. Fawcett, Preston, and Co., and the one now in question. Subsequent events fully proved the suspicion with regard to the Oreto to be well founded; she cleared from Liverpool in March last for Palermo and Jamaica, but sailed direct for Nassau, where she now is receiving her armament as a privateer for the so-called Confederate Government; and my attention was called repeatedly to the gun-boat building by Mr. Laird, by various persons, who stated that she also was for a Confederate privateer, and was being built by the Messrs. Lairds for that express purpose.

"In May last two officers of the Southern privateer Sumter, named Caddy and Beaufort, passed through Liverpool on their way to Havannah and Nassau, and while here stated that there was a gun-boat building by Mr. Laird, at Birkenhead, for the Southern Confederacy; and not long after that a foreman employed about the vessel in Mr. Laird's yard stated that she was the sister of the Oreto, and intended for the same service, and when pressed for an explanation, further stated that she was to be a privateer for the Southern Government in the United States.

"When the vessel was first tried, Mr. Wellsman, one of the firm of Fraser, Trenholm, and Co. (who are well known as agents for the Confederate Government), Andrew and Thomas Byrne, and other persons, well known as having been for months actively engaged in sending munitions of war for said Government, were present, and have accompanied her on her various trials, as they had accompanied the Oreto on her trial trip and on her departure.

"In April last the Southern screw-steamer Annie Childs, which had run the blockade out of Charleston, and the name of which was changed at this port to the Julia Usher, was laden with munitions of war, consisting of a large quantity of powder, rifled cannon, &c., by Messrs. Fraser, Trenholm, and Co., for the Southern Confederacy, and left Liverpool to run the blockade under the command of a Captain

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* Appendix, vol. i, p. 184. † Ibid., p. 185.

Hammer, and having on board several of the crew of the privateer Sumter, to which I have before referred.

"For some reason unknown this vessel came back and is now here. Since her return a youth named Robinson, who had gone in her as a passenger, has stated that the gun-boat building at Laird's for the Southern Confederacy, was a subject of frequent conversation among the officers while she (the Julia Usher) was out. That she was all the time spoken of as a Confederate vessel; that Captain Bullock was to command her; that the money for her was advanced by Fraser, Trenholm, and Co.; that she was not to make any attempt to run the blockade, but would go at once as a privateer; that she was to mount eleven guns; and that if the Julia Usher was not going, the six men from the Sumter, who were on board the Julia Usher, were to join the gun-boat. This youth, being a native of New Orleans, was extremely anxious to get taken on board the gun-boat, and wished the persons he made the communication to, to assist him and see Captain Bullock on his behalf. He has, I understand, been removed to a school in London. With reference to his statement, I may observe, that Captain Hammer referred to is a South Carolinian, has been for many years in Fraser, Trenholm, and Co.'s employ, is greatly trusted by them, and is also intimate with Captain Bullock, so that he would be likely to be well informed on the subject: and as he had no notion at that time of returning to Liverpool, he would have no hesitation in speaking of the matter to his officers, and the persons from the Sumter. I may also state that Captain Bullock referred to is in Liverpool, that he is an officer of the Confederate Navy, that he was sent over here for the express purpose of fitting out privateers and sending over munitions of war; that he transacts his business at the office of Fraser, Trenholm, and Co.; that he has been all the time in communication with Fawcett, Preston, and Co., who fitted out the Oreto, and with Laird's, who are fitting out this vessel; that he goes almost daily on board the gun-boat, and seems to be recognized as in authority.

"A Mr. Blair, of Paradise Street, in this town, who furnished the cabins of the Laird gun-boat, has also stated that all the fittings and furniture were selected by Captain Bullock, and were subject to his approval, although paid for by Mr. Laird.

"The information on which I have formed an undoubting conviction that this vessel is being fitted out for the so-called Confederate Government, and is intended to cruize against the commerce of the United States, has come to me from a variety of sources, and I have detailed it to you as far as practicable. I have given you the names of persons making the statements, but as the information in most cases is given to me by persons out of friendly feeling to the United States, and in strict confidence, I cannot state the names of my informants, but what I have stated is of such a character that little inquiry will confirm its truth.

"Everything about the vessel shows her to be a war vessel; she has well constructed magazines; she has a number of canisters of a peculiar and expensive construction for containing powder; she has platforms already screwed to her decks for the reception of swivel guns. Indeed, the fact that she is a war vessel is not denied by Messrs. Laird, but they say she is for the Spanish Government. This they stated on the 3rd of April last, when General Burgoyne visited their yard, and was shown over it and the various vessels being built there by Messrs. John Laird, junior, and Henry H. Laird, as was fully reported in the papers at the time.

"Seeing the statement, and having been already informed from so many respectable sources that she was for the so-called Confederate Government, I at once wrote to the Minister in London to ascertain from the Spanish Embassy whether the statement was true. The reply was a positive assurance that she was not for the Spanish Government. I am therefore authorized in saying that what was stated on that occasion, as well as statements since made that she is for the Spanish Government, are untrue.

"I am satisfied beyond a doubt that she is for a Confederate war vessel.

"If you desire any personal explanation or information, I shall be happy to attend you whenever you may request it.

"I am, &c.

(Signed) "THOMAS H. DUDLEY."

The statement in the above letter that the Florida was receiving armament at Nassau was erroneous. The Florida, as has been already shown, did not receive any armament at Nassau.

To this letter the Collector replied as follows:—*

The Collector of Customs, Liverpool, to the United States' Consul.

"Sir, "*Liverpool, July* 10, 1862.

"I beg to acknowledge the receipt of your communications of yesterday's date (received this morning), and to acquaint you that I shall immediately submit the same for the consideration and direction of the Board of Customs, under whom I have the honour to serve. I may observe, however, that I am respectfully of opinion the statement made by you is not such as could be acted upon by the officers of this revenue, unless legally substantiated by evidence.

"I have, &c.

(Signed) "S. PRICE EDWARDS."

A copy of Mr. Dudley's letter of the 9th July was on the 10th July transmitted by the Collector to the Commissioners of Customs, together with the following Report from the Surveyor of Customs:—†

* Appendix, vol. i, p. 186.

† Ibid., p. 185.

Surveyor's Report.

"Sir, "*Surveyor's Office, July* 10, 1862.

"I beg to report that, agreeably with your directions, I have this day inspected the steamer lying at the building-yard of the Messrs. Laird at Birkenhead, and find that she is in the same state, as regards her armament, as on the date of my former report.

"She has no guns or carriages on board, nor are her platforms fitted to the deck.

"Very respectfully,
(Signed) "E. MORGAN."

The papers transmitted by the Collector as aforesaid were referred by the Commissioners of Customs to the Solicitor to the Customs, who is the official adviser of the Department on matters of law; and he, on the 11th July, 1862, reported as follows:—*

Report from the Solicitor to the Customs.

"There is only one proper way of looking at this question. If the Collector of Customs were to detain the vessel in question, he would no doubt have to maintain the seizure by legal evidence in a Court of Law, and to pay damages and costs in case of failure. Upon carefully reading the statement I find the greater part, if not all, is hearsay and inadmissible, and as to a part the witnesses are not forthcoming or even to be named. It is perfectly clear to my mind that there is nothing in it amounting to *primâ facie* proof sufficient to justify a seizure, much less to support it in a Court of Law, and the Consul could not expect the Collector to take upon himself such a risk in opposition to rules and principles by which the Crown is governed in matters of this nature.

(Signed) "F. J HAMEL.

"*July* 11, 1862."

The Commissioners of Customs accordingly wrote to the Collector as follows:—*

The Commissioners of Customs to the Collector at Liverpool.

"Sir, "*Custom-House, London, July* 15, 1862.

"Having considered your Report of the 10th instant, inclosing a communication which you had received from Mr. T. H. Dudley, American Consul at Liverpool, apprizing you of certain circumstances relative to a vessel which he states is now being fitted out by Messrs. Laird at Birkenhead, as a gun-boat for the so-called Confederate Government of the Southern States of America, and intended to be used as a privateer against the United States, and having communicated with our Solicitor on the subject,—

"We acquaint you that there does not appear to be *prima facie* proof sufficient in the statement of the Consul to justify the seizure of the vessel, and you are to apprize the Consul accordingly.

"We transmit, for your information, a copy of the Report of our Solicitor on the matter dated the 11th instant.

(Signed) "FREDERICK GOULBURN.
"R. W. GREY."

Copies of the above papers were, on the 17th July, sent by the Commissioners of Customs to the Treasury for the information of the Lords Commissioners of the Treasury.

Up to this point, the information which was in the possession of Her Majesty's Government respecting the vessel consisted chiefly, and almost entirely, of hearsay statements, made by persons who could not be produced, as to alleged admissions by other persons who were represented to be either concerned in her equipment or identified in interest with the Confederate States, and whom, according to the rules of English legal procedure, Her Majesty's Government could not compel to give similar admissions or evidence. It was, however, apparent that she was intended for war; and there was some (though very slight) evidence tending to connect her with persons who were believed or known to be partizans or agents of the Government of the Confederate States. Mr. Dudley admitted, at the same time, that he could not give the names of his informants. The Captain Bullock mentioned above was, in fact (as Her Majesty's Government believes) an officer and agent of the Government of the Confederate States, but Her Majesty's Government had at that time no means of proving him to be such.

On the 22nd July, 1862, the Commissioners of Customs received from the Collector at Liverpool the following letter:—†

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* Appendix, vol. i. p. 187. † Ibid., p. 188.

The Collector of Customs, Liverpool, to the Commissioners of Customs.

"Honourable Sirs, "*Liverpool, July* 21, 1862.

"The United States' Consul, accompanied by his Solicitor, Mr. Squarey, has just been here with the witnesses whose affidavits are inclosed, requesting me to seize the gun-boat alluded to in your Honours' order of the 15th instant, upon the evidence adduced to him that the gun-boat has been fitted out by Messrs. Laird of Birkenhead for the Confederate Government of the Southern States.

"The only evidence of importance, as appears to me, is that of William Passmore, who had engaged himself as a sailor to serve in the vessel.

"I shall be obliged by the Board being pleased to instruct me by telegraph how I am to act, as the ship appears to be ready for sea, and may leave any hour she pleases.

"Respectfully,

(Signed) "S. PRICE EDWARDS."

"P.S.—Nothing has been done to her since my first representation, nor has anything besides coals been placed in her.

"S. P. E."

Inclosed in this letter were copies of six sworn depositions, which were as follows:—

Depositions.

1.

"I, William Passmore, of Birkenhead, in the county of Chester, mariner, make oath, and say as follows:—

"1. I am a seaman, and have served as such on board Her Majesty's ship Terrible during the Crimean War.

"2. Having been informed that hands were wanted for a fighting-vessel built by Messrs. Laird and Co., of Birkenhead, I applied on Saturday, which was, I believe, the 21st day of June last, to Captain Butcher, who, I was informed, was engaging men for the said vessel, for a berth on board her.

"3. Captain Butcher asked me if I knew where the vessel was going, in reply to which I told him I did not rightly understand about it. He then told me the vessel was going out to the Government of the Confederate States of America. I asked him if there would be any fighting, to which he replied, yes, they were going to fight for the Southern Government. I told him I had been used to fighting-vessels, and showed him my papers. I asked him to make me signalman on board the vessel, and, in reply, he said that no articles would be signed until the vessel got outside, but he would make me signalman, if they required one, when they got outside.

"4. The said Captain Butcher then engaged me as an able seaman on board the said vessel, at the wages of 4*l.* 10*s.* per month; and it was arranged that I should join the ship in Messrs. Laird and Co.'s yard on the following Monday. To enable me to get on board, Captain Butcher gave me a password, the number '290.'

"5. On the following Monday, which was, I believe, the 23rd of June last, I joined the said vessel in Messrs. Laird and Co.'s yard at Birkenhead, and I remained by her till Saturday last.

"6. The said vessel is a screw-steamer of about 1,100 tons burthen, as far as I can judge, and is built and fitted up as a fighting-ship in all respects; she has a magazine and shot and canister-racks on deck, and is pierced for guns, the sockets for the bolts of which are laid down. The said vessel has a large quantity of stores and provisions on board, and she is now lying at the Victoria wharf in the great float at Birkenhead, where she has taken in about 300 tons of coal.

"7. There are now about thirty hands on board her, who have been engaged to go out in her; most of them are men who have previously served on board fighting-ships; and one of them is a man who served on board the Confederate steamer Sumter. It is well known by the hands on board that the vessel is going out as a privateer for the Confederate Government to act against the United States under a Commission from Mr. Jefferson Davis. Three of the crew are, I believe, engineers; and there are also some firemen on board.

"8. Captain Butcher and another gentleman have been on board the ship almost every day. It is reported on board the ship that Captain Butcher is to be the sailing-master, and that the other gentleman, whose name, I believe, is Bullock, is to be the fighting captain.

"9. To the best of my information and belief, the above-mentioned vessel, which I have heard is to be called the Florida, is being equipped and fitted out, in order that she may be employed in the service of the Confederate Government in America, to cruize and to commit hostilities against the Government and people of the United States of America.

(Signed) "WILLIAM PASSMORE."

"Sworn before me at the Custom-house, Liverpool, this 21st day of July, 1862.

(Signed) "S. PRICE EDWARDS, *Collector.*"

2.

"I, John de Costa, of No. 8, Waterloo Road, Liverpool, Shipping Master, make oath, and say as follows:—

"1. I know, and have for several months known, by sight, Captain Bullock, who is very generally known in Liverpool as an Agent or Commissioner of the Confederate States in America.

"2. In the month of March last I saw the screw-steamer Annie Childs, which had run the blockade from Charleston, enter the River Mersey. She came up the Mersey with the Confederate flag flying at her peak; and I saw the Oreto, a new gun-boat which had been recently built by Messrs. W. C. Miller and Sons, and which was then lying at anchor in the river off Egremont, dip her colours three times in acknowledgment of the Annie Childs, which vessel returned the compliment, and a boat was immediately afterwards dispatched from the Annie Childs to the Oreto, with several persons on board, besides the men who were at the oars.

"3. On the 22nd day of March last I was on the North Landing-stage between 7 and 8 o'clock in the morning; I saw the said Captain Bullock go on board a tender, which afterwards took him off to the said gun-boat Oreto, which was then lying in the Sloyne. Just before he got on board the tender he shook hands with a gentleman who was with him, and said to him, 'This day six weeks you will get a letter from me from Charleston,' or words to that effect.

"4. On the same day, between 11 and 12 o'clock, as well as I can remember, I saw the Oreto go to sea. She came well in on the Liverpool side of the river, and from the Princess Pier head, where I was standing, I distinctly saw the said Captain Bullock on board her, with a person who had been previously pointed out to me by a fireman who came to Liverpool in the Annie Childs as a Charleston pilot, who had come over in the Annie Childs with Captain Bullock to take the gun-boat out.

(Signed) "JOHN DE COSTA."

"Sworn before me, at the Custom-house, Liverpool, this 21st day of July, 1862.
(Signed) "S. PRICE EDWARDS, *Collector.*"

3.

"I, Allan Stanley Clare, of Liverpool, in the county of Lancaster, Articled Clerk, make oath, and say as follows:—

"1. On the 21st day of July now instant, I examined the book at the Birkenhead Dockmaster's Office at Birkenhead, containing a list of all vessels which enter the Birkenhead docks; and I found in such book an entry of a vessel described as No. 290, and from the entries in the said book, in reference to such vessel, it appears that she is a screw-steamer, and that her registered tonnage is 500 tons, and that Matthew J. Butcher is her master.

(Signed) "ALLEN S. CLARE."

"Sworn before me, at the Custom-house, Liverpool, this 21st day of July, 1862.
(Signed) "S. PRICE EDWARDS, *Collector.*"

4.

"We, Henry Wilding, of Liverpool, in the county of Lancaster, Gentleman, and Mathew Maguire of Liverpool aforesaid, Agent, make oath and say as follows:—

"1. I, the said Matthew Maguire, for myself, say that on the 15th day of July now instant, I took Richard Brogan, whom I know to be an apprentice working in the ship-building yard of Messrs. Laird and Co., at Birkenhead, to the above-named deponent, Henry Wilding, at his residence at New Brighton.

"2. And I, the said Henry Wilding, for myself, say as follows:—I am the Vice-Consul of the United States of North America, at Liverpool.

"3. On the 15th day of July now instant I saw the said Richard Brogan and examined him in reference to a gun-boat which I had heard was being built by the said Messrs. Laird and Co. for the so-called Confederate Government, and the said Richard Brogan then informed me that the said vessel was built to carry four guns on each side and four swivel guns; that Captain Bullock had at one time, when the vessel was in progress, come to the yard almost every day to select the timber to be used for the vessel. That the said Captain Bullock was to be the captain of the said vessel; and that the said Captain Bullock had asked the said Richard Brogan to go as carpenter's mate in the said vessel for three years, which the said Richard Brogan had declined to do, because Mr. Laird, who was present at the time, would not guarantee his wages. That the said vessel was to carry 120 men, and that 30 able seamen were already engaged for her. That the petty officers for the said vessel were to be engaged for three years, and the seamen for five months. That the said vessel was then at the end of the new warehouses in the Birkenhead Dock, and that it was understood she was to take her guns on board at Messrs. Laird and Co.'s shed further up the dock; and that it was generally understood by the men in Messrs. Laird and Co.'s yard that the said vessel was being built for the Confederate Government.

"4. The vessel above-mentioned is the same which is now known as No. 290, and I verily believe that the said vessel is in fact intended to be used as a privateer or vessel of war, under a Commission from the so-called Confederate Government against the United States' Government.

(Signed) "H. WILDING.
"MATTHEW MAGUIRE."

"Sworn before me, at the Custom-house, Liverpool, this 21st day of July, 1862.
(Signed) "S. PRICE EDWARDS, *Collector.*"

5.

"I, Thomas Haines Dudley, of No. 3, Wellesley Terrace, Prince's Park, in the Borough of Liverpool, in the County of Lancaster, Esq., being one of the people called Quakers, affirm and say as follows:—

"I am the Consul of the United States of North America, for the port of Liverpool and its dependencies.

"2. In the month of July, in the year 1861, information was sent by the United States' Government to the United States' Consulate at Liverpool that a Mr. James D. Bullock of Savannah, in the State of Georgia, who was formerly the master of an American steamer called the Cahawba, was reported to have left the United States for England, taking with him a credit for a large sum of money, to be employed in fitting out privateers, and also several commissions issued by the Southern Confederate States for such privateers, and in the month of August in the year 1861, information was sent by the United States' Government to the United States' Consulate at Liverpool, that the said Captain Bullock was then residing near Liverpool, and acting as the agent of the said Confederate States in Liverpool and London.

"3. In accordance with instructions received from the Government of the United States, steps have been taken to obtain information as to the proceedings and movements of the said James D. Bullock, and I have ascertained the following circumstances, all of which I verily believe to be true, viz., that the said James D. Bullock is in constant communication with parties in Liverpool, who are known to be connected with, and acting for, the parties who have assumed the Government of the Confederate States. That the said James D. Bullock, after remaining for some time in England, left the country, and after an absence of several weeks, returned to Liverpool in the month of March last from Charleston, in the State of South Carolina, one of the seceded States, in a screw-steamer then called the Annie Childs, which had broken the blockade of the port of Charleston, then and now maintained by the United States' Navy, and which vessel, the Annie Childs, carried the flag of the Confederate States as she came up the Mersey. That, shortly after the arrival of the said James D. Bullock at Liverpool in the Annie Childs, as abovementioned, he again sailed from Liverpool in a new gun-boat called the Oreto, built at Liverpool by Messrs. W. C. Miller and Sons, shipbuilders, and completed in the early part of the present year, and which gun-boat, the Oreto, though she cleared from Liverpool for Palermo and Jamaica, in reality never went to those places, but proceeded to Nassau, New Providence, to take on board guns and arms, with a view to her being used as a privateer or vessel of war under a Commission from the so-called Confederate Government against the Government of the United States, and which said vessel, the Oreto, is stated to have been lately seized at Nassau by the Commander of Her Majesty's ship Greyhound. That the said James D. Bullock has since returned again to Liverpool, and that before he left Liverpool and since he returned, he has taken an active part in superintending the building, equipment, and fitting out of another steam gun-boat, known as No. 290, which has lately been launched by Messrs. Laird and Co., of Birkenhead, and which is now lying, as I am informed and believe, ready for sea in the Birkenhead Docks, with a large quantity of provisions and stores, and thirty men on board. That the said James D. Bullock is going out in the said gun-boat No. 290, which is nominally commanded by one Matthew S. Butcher, who, I am informed, is well acquainted with the navigation of the American coast, having formerly been engaged in the coasting trade between New York, Charleston, and Nassau.

"4. From the circumstances which have come to my knowledge I verily believe that the said gun-boat No. 290 is being equipped and fitted out as a privateer or vessel of war to serve under a Commission to be issued by the Government of the so-called Confederate States, and that the said vessel will be employed in the service of the said Confederate States to cruize and commit hostilities against the Government and people of the United States of North America.

(Signed) "THOMAS H. DUDLEY."

"Affirmed and taken before me at the Custom-house, Liverpool, this 21st day of July, 1862.
(Signed) "S. PRICE EDWARDS, *Collector.*"

6.

"I, Matthew Maguire, of Liverpool, Agent, make oath and say as follows:—

"1. I know Captain J. D. Bullock, who is commonly reputed to be the Agent or Commissioner of the Confederate States of America at Liverpool.

"2. I have seen the said J. D. Bullock several times at the yard of Messrs. Laird and Co., at Birkenhead, where a gun-boat, known as No. 290, has lately been built, whilst the building of the said vessel has been going on.

"3. On the 2nd day of July now instant, I saw the said J. D. Bullock on board the said vessel in Messrs. Laird and Co.'s yard; he appeared to be giving orders to the workmen who were employed about such vessel.

(Signed) "MATTHEW MAGUIRE."

"Sworn before me at the Custom-house, Liverpool, this 21st day of July, 1862.
(Signed) "S. PRICE EDWARDS, *Collector.*"

The above depositions were referred, as soon as they were received, to the Assistant-Solicitor and Solicitor of Customs, who, on the same day, reported as follows:—*

* Appendix vol. i, p. 192.

Reports of the Assistant Solicitor and Solicitor of Customs, referred to in the preceding Letter.

"In my opinion there is not sufficient evidence in this case to justify the detention of the vessel, under the 59th George III, c. 69. The only affidavit that professes to give anything like positive evidence is that of the seaman Passmore; but, assuming all he states to be true, what occurred between the reputed master (Butcher) and himself, would not warrant a detention under section 6, nor support an information for the penalty under that section. Nor do I think, however probable it may seem that the vessel is fitted out for the military operations mentioned, that sufficient evidence has been adduced to entitle the applicants to the interference of the Collector of Customs at Liverpool. The only justifiable grounds of seizure under section 7 of the Act would be the production of such evidence of the fact as would support an indictment for the misdemeanor under that section.

(Signed) "J. O'Dowd.

"*Customs, July* 22, 1862."

"I entirely concur with Mr. O'Dowd in opinion that there is not sufficient evidence to warrant the seizure or detention of the ship by the officers of Customs. There appears to be some evidence of enlistment of individuals, and if that were sufficfent to satisfy a Court, they would be liable to pecuniary penalties, for security of which, if recovered, the Customs might detain the ship until those penalties were satisfied or good bail given; but there is not evidence enough of enlistment to call upon the Customs to prosecute. The United States' Consul or any other person may do so at their own risk, if they see fit.

(Signed) "F. J. Hamel."

"*July* 22, 1862."

In accordance with these Reports, the Commissioners of Customs on the same 22nd July, 1822, wrote to the Collector as follows:—*

The Commissioners of Customs to the Collector of Customs, Liverpool.

"Sir, "*London, July* 22, 1862.

"Having considered your report of the 21st instant, stating, with reference to previous correspondence which has taken place on the subject of a gun-boat which is being fitted out by Messrs. Laird, of Birkenhead, that the United States' Consul, accompanied by his solicitor, has attended at the Custom-house with certain witnesses, whose affidavits you have taken and have submitted for our consideration, and has requested that the vessel may be seized, under the provisions of the Foreign Enlistment Act, upon the ground that the evidence adduced affords proof that she is being fitted out for the Government of the Confederate States of America,—

"We acquaint you that we have communicated with our solicitor on the subject, who has advised us that the evidence submitted is not sufficient to justify any steps being taken against the vessel under either the 6th or 7th section of Act 59 George III, cap. 69, and you are to govern yourself accordingly.

"The Solicitor has, however, stated that if there should be sufficient evidence to satisfy a Court of enlistment of individuals, they would be liable to pecuniary penalties, for security of which, if recovered, this Department might detain the ship until those penalties are satisfied, or good bail given; but there is not sufficient evidence to require the Customs to prosecute; it is, however, competent for the United States' Consul, or any other person to do so at their own risk if they see fit.

(Signed) "T. F. Fremantle.
"G. C. L. Berkeley."

On the same day, the papers were transmitted, by order of the Commissioners of Customs, to the Treasury, with a covering letter, which was as follows:—†

Mr. Gardner to Mr. Hamilton.

"Sir, "*Custom-House, July* 22, 1862.

"With reference to the Report of this Board of the 1st instant, respecting a vessel fitting out at Liverpool, which it is stated is intended to be used as a privateer by the so-called Confederate States of America,—

"I am directed to state that the Board have this day received a Report from their Collector at Liverpool inclosing affidavits which have been made before him with a view to the detention of the vessel; and in transmitting to you, by desire of the Board, the accompanying copy of the Collector's Report, with the affidavits referred to, I am to state that the Board, having communicated with their Solicitor, are advised that the evidence is not sufficient to justify any steps being taken against the vessel under either the 6th or 7th section of the Act 59 George III, cap. 69, and they have apprized the Collector at Liverpool accordingly, informing him at the same time that the Solicitor has also stated that if there should be sufficient evidence to satisfy a Court of the enlistment of individuals, they would be liable to pecuniary penalties, for security of which, if recovered, the Customs might detain the ship until those penalties are satisfied, or good bail given; but that there is not evidence enough of enlistment to call upon the Customs to prosecute, although the United States' Consul, or any other person, may do so at their own risk if they see fit.

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* Appendix, vol. i, p. 192.

† Ibid., p. 188.

"I am, however, to submit, should the Lords Commissioners of Her Majesty's Treasury have any doubt upon the subject, whether it may not be advisable that the opinion of the Law Officers of the Crown should be taken.

"I am, &c.
(Signed) "J. G. GARDNER."

The Secretary to the Treasury, on receiving the papers, sent them immediately to Mr. Layard, one of the Under-Secretaries of State for the Foreign Department, with an unofficial letter, which was as follows:—*

Mr. Hamilton to Mr. Layard.

"My dear Mr. Layard, "*Treasury, July* 22, 1862.

"As the communication may be considered pressing, I send it to you unofficially to save time. Perhaps you will ascertain from Lord Russell whether it is his wish that we should take the opinion of the Law Officers as to the case of this vessel. It is stated that she is nearly ready for sea.

"Sincerely yours,
(Signed) "GEO. A. HAMILTON."

The papers thus sent were received at the Foreign Office on the 23rd July, 1862 and were, on the same day, referred to the Law Officers of the Crown, with the following letter:—†

Mr. Layard to the Law Officers of the Crown.

"(Immediate.)

"Gentlemen, "*Foreign Office, July* 23, 1862.

"With reference to your Report of the 30th ultimo, I am directed by Earl Russell to transmit to you the accompanying papers, which have been received by the Board of Treasury from the Commissioners of Customs, containing further information respecting the vessel alleged to be fitting out at Liverpool for the service of the so-called Confederate States; and I am to request that you will take the same into your consideration, and favour Lord Russell at your earliest convenience with your opinion thereupon.

"The former papers on this subject are inclosed for reference if required.

"I am, &c.
(Signed) "A. H. LAYARD."

It will have been seen from the above statement that the evidence laid by Mr. Dudley before the Collector of Customs at Liverpool on the 21st July was on the same day sent to London, on the following day (the 22nd) referred to the official advisers of the Customs Department and reported on by them, and on the 23rd referred to the Law Officers of the Crown.

Of the six depositions one only (that of Passmore) contained any evidence which was at once material to the question and legally admissible. To rely on evidence of this kind proceeding from a single witness, without more corroboration or without inquiry into his antecedents, would, according to English judicial experience, have been very unsafe in a case of this nature. Of the contents of the five others the greater part was merely hearsay and not admissible as evidence; and they furnished grounds of suspicion, but not sufficient grounds for belief.

Copies of the depositions were also, on the 22nd, sent by Mr. Adams to Earl Russell, with the following Note:†—

Mr. Adams to Earl Russell.

"My Lord, "*Legation of the United States, London, July* 22, 1862.

"I have the honour to transmit copies of six depositions taken at Liverpool, tending to establish the character and destination of the vessel to which I called your Lordship's attention in my note of the 23rd of June last.

"The originals of these papers have already been submitted to the Collector of the Customs at that port, in accordance with the suggestions made in your Lordship's note to me of the 4th of July, as the basis of an application to him to act under the powers conferred by the Enlistment Act. But I feel it to be my duty further to communicate the facts as there alleged to Her Majesty's Government, and to request that such further proceedings may be had as may carry into full effect the determination which I doubt not it ever entertains to prevent, by all lawful means, the fitting out of hostile expeditions against the Government of a country with which it is at peace.

"I avail, &c.
(Signed) "CHARLES FRANCIS ADAMS."

On the 23rd July two additional depositions were sent by Mr. A. T. Squarey of

* Appendix, vol. i, p. 188. † Ibid., p. 193.

Liverpool, a Solicitor employed by Mr. Dudley, to the Board of Customs, with the following letter: —*

Mr. Squarey to Mr. Gardner.

"Sir, "*Tavistock Hotel, Covent Garden, London, July* 23, 1862.

"Referring to an application which I made on behalf of the United States' Government, under the instructions of their Consul at Liverpool, to the Collector of Customs at Liverpool on Monday last, for the detention under the provisions of the Act 59 Geo. III, cap. 69, of a steam gun-boat built by Messrs. Laird and Co., at Birkenhead, and which there is no doubt is intended for the Confederate States, to be used as a vessel of war against the United States' Government, I beg now to inclose two affidavits which reached me this morning from Liverpool: one made by Robert John Taylor, and the other by Edward Roberts, and which furnish additional proof of the character of the vessel in question.

"I also inclose a Case which has been submitted to Mr. Collier, Q.C., with his opinion thereon. I learnt this morning from Mr. O'Dowd that instructions were forwarded yesterday to the Collector at Liverpool not to exercise the powers of the Act in this instance, it being considered that the facts disclosed in the affidavits made before him were not sufficient to justify the Collector in seizing the vessel. On behalf of the Government of the United States, I now respectfully request that this matter, which I need not point out to you involves consequences of the gravest possible description, may be considered by the Board of Customs on the further evidence now adduced. The gun-boat now lies in the Birkenhead Docks, ready for sea in all respects, with a crew of fifty men on board; she may sail at any time, and I trust that the urgency of the case will excuse the course I have adopted of sending these papers direct to the Board instead of transmitting them through the Collector at Liverpool, and the request which I now venture to make that the matter may receive immediate attention.

"I have, &c.
(Signed) "A. T. SQUAREY."

The two additional depositions were as follows:—

Depositions.

1.

"I, Edward Roberts, of No. 6 Vere Street, Toxteth Park, in the county of Lancaster, ship-carpenter, make oath and say as follows:—

"1. I am a ship-carpenter, and have been at sea for about four years in that capacity.

"2. About the beginning of June last I had been out of employ for about two months, and hearing that there was a vessel in Messrs. Laird and Co.'s yard fitting out to run the blockade, I applied to Mr. Barnett, shipping-master, to get me shipped on board the said vessel.

"3. On Thursday, the 19th day of June last, I went to the said Mr. Barnett's office, No. 11, Hanover Street, Liverpool, in the county of Lancaster, and was engaged for the said vessel as carpenter's mate. By the direction of the said Mr. Barnett I met Captain Butcher the same day on the George's landing-stage, and followed him to Messrs. Laird and Co.'s shipbuilding yard, and on board a vessel lying there. The said Captain Butcher spoke to the boatswain about me, and I received my orders from the said boatswain. At dinner-time the said day, as I left the yard, the gate-man asked me if I was 'going to work on that gun-boat;' to which I replied, 'Yes.'

"4. The said vessel is now lying in the Birkenhead float, and is known by the name No. 290. The said vessel has coal and stores on board. The said vessel is pierced for guns, I think four on a side, and a swivel gun. The said vessel is fitted with shot- and canister-racks, and has a magazine. There are about fifty men, all told, now on board the said vessel. It is generally understood on board of the said vessel that she is going to Nassau for the Southern Government.

"5. I know Captain Bullock by sight, and have seen him on board of the said vessel five or six times; I have seen him go round the said vessel with Captain Butcher. I understood, both at Messrs. Laird and Co.'s yard and also on board the said vessel, that the said Captain Bullock was the owner of the said vessel.

"6. I have been working on board the said vessel from the 19th day of June last up to the present time, with wages at the rate of 6*l.* per month, payable weekly. I have signed no articles of agreement. The talk on board is that an agreement will be signed before sailing.

(Signed) "EDWARD ROBERTS."

"Sworn at Liverpool, in the county of Lancaster, this 22nd day of July, 1862.
"Before me,
(Signed) "WM. BROWN, *Justice of the Peace for Lancashire and Liverpool.*"

2.

"I, Robert John Taylor, of Mobile, but at present remaining temporarily at Liverpool, mariner, make oath and say as follows:—

"1. I am a native of London, and 41 years of age. From fourteen years upwards I have followed the sea. During the last fifteen years I have been living in the Confederate States of America, princi-

* Appendix, vol. i, p. 194.

pally at Savannah and Mobile, and since the Secession movement I have been engaged in running the blockade. I have run the blockade six times, and been captured once.

"2. The vessels in which I have been engaged in running the blockade have sailed from Mobile, and have gone to Havana and New Orleans. I am well acquainted with the whole of the coast of the Confederate States, as I have been principally engaged since 1847 in trading to and from the Gulf ports.

"3. I came to England, after my release from Fort Warren, on the 29th of May last. I came here with the intention of going to the Southern States, as I could not get there from Boston.

"4. Mr. Rickarby, of Liverpool, a brother of the owner, at Mobile, of the vessel in which I was captured when attempting to run the blockade, gave me instructions to go to Captain Butcher at Laird's yard, Birkenhead. I had previously called on Mr. Rickarby, and told him that I wanted to go South, as the Northerners had robbed me of my clothes when I was captured, and I wanted to have satisfaction.

"5. I first saw Captain Butcher at one of Mr. Laird's offices last Thursday fortnight (namely, the 3rd of July last). I told him that I had been sent by Mr. Rickarby, and asked him if he were the captain of the vessel which was lying in the dock. I told him that I was one of the men that had been captured in one of Mr. Rickarby's vessels, and that I wanted to get South in order to have retaliation of the Northerners for robbing me of my clothes. He said that if I went with him in his vessel I should very shortly have that opportunity.

"6. Captain Butcher asked me at the interview if I was well acquainted with the Gulf ports, and I told him I was. I asked him what port he was going to, and he replied that he could not tell me then, but that there would be an agreement made before we left for sea. I inquired as to the rate of wages, and I was to get 4*l*. 10*s*. per month, payable weekly.

"7. I then inquired if I might consider myself engaged, and he replied, Yes, and that I might go on board the next day, which I accordingly did; and I have been working on board up to last Saturday night.

"8. I was at the Siege of Acre in 1840, in Her Majesty's frigate Pique, Captain Edward Boxer, and served on board for nine months. Captain Butcher's ship is pierced for eight broadside guns and four swivels or long-toms. Her magazine is complete, and she is fitted up in all respects as a man-of-war, without her ammunition. She is now chock-full of coals, and has, in addition to those in the hold, some thirty tons on deck.

"9. One day, whilst engaged in heaving up some of the machinery, we were singing a song, as seamen generally do, when the boatswain told us to stop that, as the ship was not a merchant-ship but a man-of-war.

(Signed) "ROBERT JOHN TAYLOR."

"Sworn at Liverpool in the county of Lancaster, this 22nd day of July, 1862.

"Before me,

(Signed) "W. J. LAMPORT, *Justice of the Peace for Liverpool.*"

The Case and Opinion which, together with the additional depositions, were mentioned and inclosed in Mr. Squarey's letter, were as follows:—*

Case submitted to Mr. Collier, Q.C., and his Opinion thereon.

"You will receive, herewith, copies of the following affidavits in reference to a gun-boat known as No. 290, which was built by Messrs. Laird and Co. at Birkenhead, as it is believed, for the Confederate States of America, and which is now lying ready for sea in all respects in the Birkenhead docks:—No. 1. Affirmation of T. H. Dudley; No. 2. Affidavit of J. de Costa; No. 3. Affidavit of Mr. Maguire; No. 4. Affidavit of H. Wilding and M. Maguire; No. 5. Affidavit of A. S. Clare; No. 6. Affidavit of William Passmore; No. 7. Affidavit of Edward Roberts; No. 8. Affidavit of Robert John Taylor. An application has been made, on the Affidavits Nos. 1 to 6 inclusive, to the Collector of Customs at Liverpool, to detain the vessel under the provisions of the Act 59 Geo. III, cap. 69; but, under the advice of the Solicitors to the Customs, the Board have declined to sanction the detention of the vessel.

"You are requested to advise the Consul for the United States at Liverpool whether the affidavits now submitted to you would disclose facts which would justify the Collector of Customs in detaining the vessel under the Act in question.

"*July* 23, 1862."

Opinion.

"I have perused the above affidavits, and I am of opinion that the Collector of Customs would be justified in detaining the vessel. Indeed, I should think it his duty to detain her; and that if, after the application which has been made to him, supported by the evidence which has been laid before me, he allows the vessel to leave Liverpool, he will incur a heavy responsibility, a responsibility of which the Board of Customs, under whose directions he appears to be acting, must take their share.

"It appears difficult to make out a stronger case of infringement of the Foreign Enlistment Act, which, if not enforced on this occasion, is little better than a dead letter.

"It well deserves consideration whether, if the vessel be allowed to escape, the Federal Government would not have serious grounds of remonstrance.

(Signed) "R. P. COLLIER.

"*Temple, July* 23, 1862."

* Appendix, vol. i, p. 196.

The Case and Opinion, together with the additional depositions, were referred to the Assistant-Solicitor of Customs, who on the same day reported as follows :—*

"I have read the additional evidence, and I do not think that it materially strengthens the case of the applicants. As regards the opinion of Mr. Collier, I cannot concur in his views; but, adverting to the high character which he bears in his profession, I submit that the Board might act judiciously in recommending the Lords of the Treasury to take the opinion of the Law Officers of the Crown.

(Signed) "J. O'Dowd.

"*July* 23, 1862."

Mr. Squarey's letter, with the additional depositions and the Case and Opinion, were on the same 23rd July sent by the Board of Customs to the Treasury, with a suggestion that the opinion of the Law Officers of the Crown should be taken on the matter. As soon as received at the Treasury, they were sent unofficially to Mr. Layard, who was at the time in the House of Commons. Mr. Layard, after communicating with Earl Russell, sent them at once, by his (Earl Russell's) instructions, to the Law Officers of the Crown, with the following letter :—*

Mr. Layard to the Law Officers of the Crown.

"Gentlemen, "*Foreign Office, July* 23, 1862.

"With reference to my letter of this morning, sending to you papers respecting the vessel stated to be preparing for sea at Birkenhead for the service of the Government of the so-styled Confederate States of North America, I am directed by Earl Russell to transmit to you a further letter from the Commissioners of Customs, inclosing additional papers respecting this vessel; and I am to request that you will take these papers into your consideration, and favour Lord Russell at your earliest convenience with your opinion as to the steps which ought to be taken by Her Majesty's Government in the matter.

"I am, &c.

(Signed) "A. H. Layard."

Copies of the papers sent by Mr. Squarey were on the 26th July received by Earl Russell from Mr. Adams, together with the following letter :—*

Mr. Adams to Earl Russell.

"My Lord, "*Legation of the United States, London, July* 24, 1862.

"In order that I may complete the evidence in the case of the vessel now fitting out at Liverpool, I have the honour to submit to your Lordship's consideration the copies of two more depositions taken respecting that subject.

"In the view which I have taken of this extraordinary proceeding as a violation of the Enlistment Act, I am happy to find myself sustained by the opinion of an eminent lawyer of Great Britain, a copy of which I do myself the honour likewise to transmit.

"Renewing, &c.

(Signed) "Charles Francis Adams."

On the 25th July a further deposition was received by the Board of Customs from Mr. Squarey, referred to the Assistant-Solicitor of Customs, and transmitted to the Treasury; from whence on Saturday, the 26th July, it was sent to the Foreign Office, and was on the same day referred to the Law Officers of the Crown, with a request that they would take it into consideration together with the other papers then before them relating to the same subject.

This further deposition was as follows :—†

Affidavit of Henry Redden.

"I, Henry Redden, of Hook Street, Liverpool, in the county of Lancaster, seaman, make oath, and say as follows :—

"1. I am a seaman, and have followed the sea for fifteen years. I have been boatswain on board both steamers and sailing-vessels, and belong to the Naval Reserve.

"2. About six weeks ago I was engaged by Captain Butcher (with whom I have previously sailed) as boatswain on board a vessel then in Messrs. Laird and Co.'s ship-building yard, but now lying in the Birkenhead float, and known by the name No. 290. The said Captain Butcher offered me 10*l.* per month, and said an agreement should be signed when we got outside. He told me that we should have plenty of money when we got home, as we were going to the Southern States on a speculation to try and get some.

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* Appendix, vol. i, p. 197. † Ibid., p. 198.

"3. The crew now on board the said vessel consists of about forty men, but I believe that she will take to sea about 100 men, all told. It is generally understood on board that she will clear for Nassau, but not make that port. The said vessel has all her stores and coals on board ready for sea. She is fitted in all respects as a man-of-war, to carry six broadside-guns and four pivots, but has no guns or ammunition on board as yet. The rules on board are similar to those in use on a man-of-war, and the men are not allowed to sing as they do on a merchantman. The call is used on board. The said vessel is of about 1,100 tons burthen.

"4. I know Captain Bullock. He has been superintending the building of the said vessel in Messrs. Laird and Co.'s yard, and is, I believe to take charge of the vessel when we get outside.

"It is generally understood on board the said vessel that she belongs to the Confederate Government.

(Signed) "HENRY REDDEN.

"Sworn this 24th day of July, 1862.
"Before me,
(Signed) "JOHN STEWART, *a Justice of the Peace for the County of Lancaster.*"

On this deposition the Assistant-Solicitor of Customs had, on the 25th July, reported as follows :—*

"I submit a reference to my former Reports, to the opinions expressed in which I feel still bound to adhere. So far from giving additional force to the application, the affidavit of Henry Redden appears to me to weaken it, as, after the lapse of several days since the date of the former affidavits, the applicants are confessedly unable to make out a better justification for detaining the vessel. It is, no doubt, difficult to procure satisfactory evidence in such a case; but, in the absence of at least a clear *primâ facie* case there cannot exist those grounds for detaining the vessel which the Foreign Enlistment Act contemplates.

(Signed) "J. O'DOWD.

"*Customs, July* 25, 1862."

From the above statement it will have been seen that the additional papers sent by Mr. Squarey on the 23rd were on the same day referred by the Board of Customs to their official adviser and reported on by him, and were also on the same day transmitted by the Board, through the Treasury, to the Foreign Office and thence referred to the Law Officers of the Crown.

It will have been seen also that the further deposition received on the 25th was on that day reported on by the official adviser of the Board of Customs, and was on the following day referred to the Law Officers of the Crown.

On Tuesday the 29th July, the Law Officers of the Crown reported as follows on the papers which had been successively referred to them :—†

The Law Officers of the Crown to Earl Russell.

"My Lord, "*Temple, July* 29, 1862.

"We are honoured with your Lordship's commands signified in Mr. Layard's letter of the 23rd July instant, stating that, with reference to our Report of the 30th ultimo, he was directed by your Lordship to transmit to us the accompanying papers, which had been received by the Board of Treasury from the Commissioners of Customs, containing further information respecting the vessel alleged to be fitting out at Liverpool for the service of the so-called Confederate States, and to request that we would take the same into our consideration, and favour your Lordship at our earliest convenience with our opinion thereupon.

"The former papers on this subject were inclosed for reference if required.

"We are also honoured with your Lordship's commands signified in Mr. Layard's letter of the 23rd July instant, stating that, with reference to his letter of that date, sending to us papers respecting the vessel stated to be preparing for sea at Birkenhead, for the service of the Government of the so-styled Confederate States of North America, he was directed by your Lordship to transmit to us a further letter from the Commissioners of Customs, inclosing additional papers respecting this vessel, and to request that we would take these papers into our consideration, and favour your Lordship at our earliest convenience with our opinion as to the steps which ought to be taken by Her Majesty's Government in the matter.

"We are further honoured with your Lordship's commands signified in Mr. Layard's letter of the 26th July instant, stating that he was directed by your Lordship to transmit to us the accompanying letter from the Board of Treasury, dated July 26, which your Lordship had received that morning, containing further information respecting the vessel stated to be fitting out at Liverpool for the service of the so-styled Confederate States; and to request that we would take the same into our consideration, together with the other papers on the same subject, which were then before us.

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* Appendix, vol. i, p. 198. † Ibid., p. 200.

"In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

"That, in our opinion, the evidence of the witnesses who have made depositions (we allude particularly to William Passmore, Edward Roberts, Robert John Taylor, and Henry Redden), coupled with the character and structure of the vessel, makes it reasonably clear that such vessel is intended for warlike use, against citizens of the United States, and in the interest of the (so-called) Confederate States. It is not, and cannot be, denied that the vessel is constructed and adapted as a vessel of war; being pierced for guns, the sockets for the bolts for which, Passmore states, are already laid down, and having a magazine, and shot and cannister racks on the deck, and a certain number of cannisters being actually on board. It is also stated in the Report of the Commissioners of Customs of July 1, that Messrs. Laird, the builders, do not deny that the vessel has been built for some "foreign Government," although they maintain apparently a strict reserve as to her actual destination, and as to the "foreign Government," in particular, for whose service she is intended. We do not overlook the facts that neither guns nor ammunition have as yet been shipped; that the cargo (though of the nature of naval stores in connection with war-steamers) may yet be classed as a mercantile cargo; and that the crew do not appear to have been, in terms and form at least, recruited or enrolled as a military crew. It is to be expected that great stress will be laid upon these circumstances by the owners and others who may oppose the condemnation of the vessel if seized by the officers of the Customs; and an argument may be raised as to the proper construction of the words which occur in the 7th section of the Foreign Enlistment Act, 'Equip, furnish, fit out, or arm,' which words, it may be suggested, point only to the rendering a vessel, whatever may be the character of its structure, presently fit to engage in hostilities. We think, however, that such a narrow construction ought not to be adopted and, if allowed, would fritter away the Act, and give impunity to open and flagrant violations of its provisions. We, therefore, recommend that, without loss of time, the vessel be seized by the proper authorities, after which an opportunity will be afforded to those interested, previous to condemnation, to alter the facts, if it may be, and to show an innocent destination of the ship. In the absence of any such countervailing case, it appears to us that the vessel, cargo, and stores may be properly condemned.

"We have, &c.

(Signed) "WM. ATHERTON.

"ROUNDELL PALMER."

On the same 29th July the Board of Customs received from Mr. Dudley's Solicitors a communication, dated the 28th, to the effect that they had every reason to believe that the vessel would sail on the 29th.* And soon afterwards the Board received from the same firm a telegraphic message stating that she had come out of dock the night before (the 28th) and had left the port that morning (the 29th).

On the 30th July the Board of Customs received from Mr. Dudley's Solicitors the following letter, which was transmitted, through the Treasury, to the Foreign Office:—†

Messrs. Duncan, Squarey, and Mackinnon to Mr. Gardner.

"Sir, "10, *Water Street, Liverpool, July* 29, 1862.

"We telegraphed you this morning that the above-named vessel was leaving Liverpool; she came out of dock last night and steamed down the river, between 10 and 11 A.M.

"We have reason to believe that she is gone to Queenstown.

"Yours obediently,

(Signed) "DUNCAN, SQUAREY, AND MACKINNON."

On the 31st July orders were sent by the Commissioners of Customs to the Collectors of Customs at Liverpool and Cork, that the vessel should be seized if she should be within either of those ports. On the morning of the 1st August similar orders were sent to the Collectors at Beaumaris and Holyhead.‡ Instructions were likewise sent to the Governor of the Bahamas, that, if she should put in at Nassau, she should be detained.§

On the 30th July, the day after the departure of the vessel, Mr. Dudley wrote as follows to the Collector of Customs at Liverpool:—‖

Mr. Dudley to Mr. Edwards.

"Sir, "*United States' Consulate, Liverpool, July* 30, 1862.

"Referring to my previous communication to you on the subject of the gun-boat No. 290, fitted out by Messrs. Laird, of Birkenhead, I beg to inform you that she left the Birkenhead Dock on Monday night; and yesterday morning left the river accompanied by the steam-tug Hercules.

"The Hercules returned last evening, and her master states that the gun-boat was cruizing off Point Lynas; that she had six guns on board concealed below, and was taking powder from another vessel.

"The Hercules is now alongside the Woodside landing-stage, taking on board men (forty or fifty); beams, evidently for gun-carriages, and other things, to convey down to the gun-boat; a quantity of cutlasses were taken on board on Friday last.

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* Appendix, vol. i, p. 200. † Ibid., p. 203. ‡ Ibid., p. 205. § Ibid., p. 203. ‖ Ibid., p. 204.

"These circumstances all go to confirm the representations heretofore made to you about this vessel, in the face of which I cannot but regret she has been permitted to leave the port; and I report them to you that you may take such steps as you may deem necessary to prevent this flagrant violation of neutrality.

"Respectfully,
(Signed) "THOMAS H. DUDLEY, *Consul.*"

The Surveyor of Customs, by direction of the Collector, immediately went on board of the Hercules, and reported as follows:—*

Mr. Morgan to Mr. Edwards.

"Sir, "*Surveyor's Office, July* 30, 1862.

"Referring to the steamer built by the Messrs. Laird, which is suspected to be a gun-boat intended for some foreign Government, I beg to state that, since the date of my last Report concerning her, she has been lying in the Birkenhead Docks, fitting for sea, and receiving on board coals and provisions for her crew.

"She left the dock on the evening of the 28th instant, anchored for the night in the Mersey, abreast the Canning Dock, and proceeded out of the river on the following morning, ostensibly on a trial trip, from which she has not returned.

"I visited the tug Hercules this morning as she lay at the landing-stage at Woodside, and strictly examined her holds and other parts of the vessel. She had nothing of a suspicious character on board, no guns, no ammunition, or anything appertaining thereto. A considerable number of persons, male and female, were on deck, some of whom admitted to me that they were a portion of the crew, and were going to join the gun-boat.

"I have only to add that your directions to keep a strict watch on the said vessel have been carried out; and I write in the fullest confidence that she left this port without any part of her armament on board. She has not as much as a single gun or musket.

"It is said that she cruized off Port Lynas last night, which, as you are aware, is some fifty miles from this port.

"Very respectfully,
(Signed) "E. MORGAN, *Surveyor.*"

Mr. Dudley's letter and the Surveyor's report were transmitted to the Board of Customs. Immediately on the receipt of them the following telegraphic message was sent to the Collector:—*

"*July* 31, 1862, 11·35 A.M.

"Examine Master of Hercules, whether he can state that guns are concealed in vessel 290, and that powder has been taken on board."

This order was executed, and the Collector replied as follows:—†

Mr. Edwards to the Commissioners of Customs.

"Honourable Sirs, "*Custom-House, Liverpool, August* 1, 1862.

"The master of the Hercules has attended here this morning, and I beg to inclose his examination taken on oath, whereby it will be seen that the statement in the letter of the American Consul, forwarded with my Report of the 30th ultimo, is not borne out. The Board will see that the vessel has left the port. Should opportunity, however, offer, she shall be seized in accordance with the directions of the Board, as contained in the telegram of yesterday's date.

(Signed) "S. PRICE EDWARDS."

The Examination of Thomas Miller, taken on Oath by the Collector.

"I am the master of the steam-tug Hercules. I accompanied the new gun-boat built by Mr. Laird (No. 290, I believe she is distinguished by) to sea on Tuesday last. I kept in sight of her, in case the services of the steam-tug should be required, until she lay to, about a mile off the Bell Buoy, and about 14 miles from the Canning Dock. The vessel left her anchorage about 10 A.M., and I left her between 4 and 5 P.M. I saw nothing on board the ship but coals. I returned from the vessel in the evening, and got into the river about 7 P.M.; there were some of Mr. Laird's workmen and riggers on board; all of these, I believe, I brought back. The next day, Wednesday, I left the landing-stage in the river, and took with me from twenty-five to thirty men, who, I believe, were to be employed on board as part of the crew; they appeared to be all sailors or firemen. I found the vessel about 3 o'clock that afternoon in Beaumaris Bay. I put the men on board, and lay alongside till midnight. We were from three to four miles from the shore; it was a fine day. Besides the men, I put on board an anchor-stock, a piece of wood about 15 feet long, and two pieces of brass belonging to the machinery. I neither carried guns, powder, or ammunition of any kind to her, nor did I see anything of this description on board,

* Appendix, vol. i, p. 205. † Ibid., p. 206.

nor yet being put on board. There was no vessel of any description came near the vessel while I was by her. I have never seen the American Consul to my knowledge. I never told him or any one else that they were taking powder on board the new vessel. I never was told what she was for, or what was her destination. The piece of wood which I have mentioned was not in any way fit for a gun-carriage. I thought it was intended to rest the ship's boat upon; it was planed and cut out for some purpose, if not to rest the boat upon.

(Signed) "THOMAS MILLER.

"Sworn at the Custom-house, Liverpool, 1st August, 1862."

The subjoined letters received by the Board of Customs from their officers at Beaumaris, Holyhead, and Cork show what was done by those officers in obedience to the orders of the Board:—*

Mr. Cunnah to the Secretary to the Customs, London.

"Sir, "*Custom-House, Holyhead, August* 1, 1862.

"Your telegram respecting the iron steam-vessel 290 is duly to hand.

"The vessel is not, at present, within the limits of this creek. I have arranged that constant watch shall be kept, so that immediately upon her entering either of the harbours or the roadstead, she will be seized; and I am now leaving (to go along the coast) to Point Lynas and Amlwch to make further inquiries.

"I beg also to state that I have forwarded a copy of the message to the Collector of Customs, Beaumaris, and the principal coast officer at Amlwch.

"I have, &c.

(Signed) "E. B. CUNNAH, *Principal Coast Officer.*"

Mr. Smith to Mr. Gardner.

"Sir, "*Custom-House, Beaumaris, August* 2, 1862.

"On receipt of your telegram on the 1st instant, directing me to seize the steam-ship 290, reported to be off Point Lynas, I immediately proceeded to Amlwch and instituted inquiries, but could get but little satisfactory information. I heard that there had been a suspicious screw-barque in Moelfra Roads on Wednesday last; that the shore boats would not be allowed alongside. I called on Mr. Pierce, chief officer of the Coast Guard, and consulted with him; I requested that he should order his boat, with four hands armed, to be at Point Lynas by 5 o'clock the next morning to meet us; I took a car at Amlwch, accompanied by Mr. Pierce and my principal coast officer, and proceeded to Point Lynas Lighthouse, and made every inquiry of the keeper. I then proceeded to the telegraph station, and on inquiry there found that the suspected vessel had not been seen by either party since Wednesday evening, when she was riding in Moelfra Roads. We then got into the Coast Guard boat and proceeded to Moelfra, and found that a large black screw barque, or three-masted topsail yard screw steamer, with black funnel, and no name or port on her, had arrived at Moelfra Roads at 7·30 P.M. on Tuesday evening last, and came to anchor; that a fishing-boat was going alongside, and asked if they wanted any fish: the answer from the steamer was, 'No, keep off.' On Wednesday they appeared to be washing the decks and cleaning her, and about 5 P.M. a tug-boat, supposed to belong to the Old Tug Company of Liverpool, went alongside with what was supposed to be an excursion party, the passengers going on board the screw-steamer; there was music on board. The tug-boat remained alongside until about 10 o'clock P.M. the same evening, when she left; the shore people could not say whether she took the party she brought back again, because it was too dark. At 3 o'clock A.M. the following morning, viz., Thursday, the screw steamer got under weigh and proceeded to sea, and has not since been seen by any parties on the shore along the whole part of that coast.

"They held no communication whatever with the shore during her stay in Moelfra Roads.

"I am, &c.

(Signed) "W. H. SMITH, *Collector.*"

Mr. Cassell to the Secretary to the Customs.

"Gun-boat 290, the subject of Telegram from the Secretary of Customs, 31st ultimo, and Board's Order, 89/1862.

"Sir, "*Custom-House, Cork, August* 4, 1862.

"Immediately on the receipt of your telegraphic message steps were taken for the detention of the above-mentioned vessel, should she put into this port; but, up to the close of this letter, 4 P.M., she has not made her appearance.

"I am, &c.

(Signed) "F. CASSELL, *Collector.*"

The vessel in fact sailed from the port of Liverpool on Tuesday, the 29th July, between 10 and 11 A.M. She sailed ostensibly with the intention of making a trial trip and returning to her moorings; and, in order to give an appearance of truth to this pre-

* Appendix, vol. i, pp. 207–8.

tence, a number of persons were taken on board, who, after accompanying her for a short distance, returned to Liverpool in a tug-boat. She had not been registered as a British ship, nor had she been cleared at the Custom-house for an outward voyage. She took her departure before the Report of the Law Officers had been received at the Foreign Office, and therefore before any orders for her detention had been given. Whither she was bound, or in what direction she was likely to shape her course, was unknown to the officers of the Government, as it was to Mr. Adams, Mr. Dudley, and their informants and advisers. From Mr. Dudley's communications with his own Government, it appears that on the 30th July he thought she would probably go to Nassau; afterwards he gave some credence to a rumour that she was bound for a Spanish port, and subsequently believed that she would try to reach some port in the Confederate States. Her Majesty's Government was equally without means of knowledge. It will have been seen, however, that orders to detain her were sent by the Government, not only to Liverpool, whither it was still possible that she might return, but to other ports, which (or the roadsteads adjacent to which) she might probably enter before proceeding to sea. She did in fact enter a roadstead on the coast of North Wales, which lies at a considerable distance from both Beaumaris and Holyhead, but had quitted it before the officers of Customs authorized to detain her could arrive on the spot.

It will have been seen also that when she quitted Liverpool, and up to the time of her final departure from British waters, she was entirely unarmed, and had on board no guns, gun-carriages, or ammunition. As to the persons who composed her crew, and the terms on which they were hired, and as to any other persons who may have gone to sea on board of her, Her Majesty's Government had not, through its officers at Liverpool or otherwise, any means of information. It appears, however, from depositions which have been subsequently communicated to Her Majesty's Government by Mr. Adams, and Her Majesty's Government believes it to be true, that the crew, after the ship had left Liverpool, signed Articles for Nassau or some intermediate port; that persuasion was afterwards used, whilst the ship was at sea but still under the British flag, to induce them to enlist in the naval service of the Confederate States, and that such of them as were induced to do so signed fresh Articles after the arrival of the vessel at the Azores.

Mr. Adams had, in the month of June 1862, requested Captain Craven, commanding the United States' war-steamer Tuscarora, to bring his ship from Gibraltar to Southampton, in order to wait for and capture the vessel should she put to sea. The Tuscarora came to Southampton accordingly in the beginning of July, and, on the 17th July, Mr. Adams wrote to Mr. Seward, "I have supplied to Captain Craven all the information I can obtain respecting the objects and destination of this vessel and have advised him to take such measures as may, in his opinion, be effective to intercept her on her voyage out. He will probably leave Southampton in a day or two."

The Tuscarora, however, lay at Southampton until the evening of the 29th July, when her Commander, after receiving two telegraphic messages from Mr. Adams informing him that the vessel had sailed, and urging him to put to sea immediately, took his departure for Queenstown. An account of the failure of the Tuscarora to intercept the vessel is given in the subjoined despatch addressed by Mr. Adams to Mr. Seward:—*

Mr. Adams to Mr. Seward.

"Sir, "*Legation of the United States, London, August* 7, 1862.

"In my despatch of the 30th July, I brought down the narrative of the proceedings in the case of the gun-boat No. 290, to the morning of the 29th. Later in the day I sent another telegram to Captain Craven, giving further intelligence from Liverpool, urging his departure from Southampton, also that he should let me know his next movements, and cautioning him about the line of British jurisdiction. To this message the Captain immediately replied, announcing his departure at 8 o'clock, and his intention to touch at Queenstown for further information. On the 30th of July I wrote to Captain Craven, by mail to Queenstown, giving fuller details, received at half-past 11 o'clock from Mr. Dudley, touching the movements of the gun-boat off Point Lynas on that day. Early on the morning of the 31st I sent a telegram to Captain Craven, at Queenstown, apprizing him that No. 290 was said to be still off Point Lynas. At about 10 o'clock P.M. of that evening I received a telegram from Captain Craven, dated at Queenstown, announcing his reception of my despatch, and his intention to await further instructions. This was answered by me early the next morning in the following words, by telegram:—

"'At latest, yesterday, she was off Point Lynas; you must catch her if you can, and, if necessary, follow her across the Atlantic.'

"On the same day I received by mail a note from Captain Craven, dated the 31st, announcing the receipt of my despatches, and his decision to go to Point Lynas at noon on the 1st instant.

* Appendix, vol. i, p. 251.

"Captain Craven seems to have sailed up St. George's Channel. This last movement must have been made in forgetfulness of my caution about British jurisdiction, for, even had he found No. 290 in that region, I had, in previous conversations with him, explained the reasons why I should not consider it good policy to attempt her capture near the coast. In point of fact, this proceeding put an end to every chance of his success.

"On the 5th instant I received a letter from him dated the 4th, at Queenstown, inclosing a report of his doings, addressed to the Secretary of the Navy, left open for my inspection, which I forward by this steamer, and at the same time apprizing me of his intention to go round to Dublin, and await a letter from me prior to his return to his station at Gibraltar. To this I sent the following reply:—

"'*Legation of the United States, London, August* 6, 1862.

"'I will forward your letter to the Secretary of the Navy. Having in my hands sufficient evidence to justify the step, I was willing to assume the responsibility of advising you to follow the boat No. 290, and take her wherever you could find her. But I cannot do the same with other vessels, of which I have knowledge only from general report. I therefore think it best that you should resume your duties under the general instructions you have from the Department, without further reference to me.'

"It may have been of use to the Tuscarora to have obtained repairs at Southampton to put her in seaworthy condition. But had I imagined that the Captain did not intend to try the sea, I should not have taken the responsibility of calling him from his station. I can only say that I shall not attempt anything of the kind again.

"I have, &c.
(Signed) "CHARLES FRANCIS ADAMS."

Captain Craven's failure to intercept the vessel appears to have been regarded by Mr. Adams as evincing remissness and dilatoriness on the part of the former, and a want of the promptitude and judgment which ought to have been used under the circumstances of the case. It is probable indeed that he would have succeeded in intercepting her if he had used the needful activity and despatch.

For some weeks after the sailing of the vessel (which, up to the time of her departure, had continued to be known only as "the 290," from the number which she bore in the builders' yard) nothing more was heard of her. On the 1st September, 1862, a steam-ship named the Bahama which, on the 13th September, had cleared from Liverpool for Nassau, returned to the port and was entered as in ballast from Angra in the Azores. On the 3rd September, 1863, the Assistant Collector of Customs at Liverpool sent to the Board of Customs, with reference to this ship, the subjoined letter and inclosures:—*

Mr. Stuart to the Commissioners of Customs.

"Honourable Sirs, "*Custom-House, Liverpool, September* 3, 1862.

"With reference to the Collector's Report of the 1st ultimo, I beg to transmit, for the information of the Board, the annexed Reports from the Surveyor and Assistant Surveyor, detailing some information they have obtained respecting the gun-boat No. 290. I also inclose a specification of the cargo taken out by the Bahama, and which there appears no reason to doubt was transferred to the gun-boat.

"Respectfully,
(Signed) "W. G. STUART, *Assistant Collector.*"

(Inclosure 1.)

Mr. Hussey to Mr. Stewart.

"Sir, "*Liverpool, Nelson Dock, September* 2, 1872.

"I beg to state that a steam-ship called the Bahama arrived here last evening from Angra (the capital of the Island of Terceira, one of the Azores) having previously cleared from Liverpool for Nassau.

"In consequence of a paragraph which appeared in the newspaper of this morning in reference to the above vessel, I deemed it expedient to send for the master, Tessier, and to inquire the nature of the cargo shipped on board in Liverpool. He states that he received sixteen cases, the contents of which he did not know, but presumed they were arms, &c., and, after proceeding to the above port, transferred the sixteen cases to a Spanish vessel, and returned to Liverpool with a quantity of coals.

"The master also states that, when off the Western Islands, he spoke the Confederate gun-boat Alabama (No. 290, built in Mr. Laird's yard at Birkenhead), heavily armed, having a 100-pounder pivot-gun mounted at her stern, which he believes is intended to destroy some of the sea-port towns in the Northern States of America.

"The above case having excited much interest in the port, I deemed it expedient to report the facts for your information.

"Respectfully,
(Signed) "J. HUSSEY, *Assistant Surveyor.*"

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* Appendix, vol. i, p. 208.

(Inclosure 2.)

SPECIFICATION of Shipment per Bahama, August 11, 1862.

			Cwts.	qrs.	lbs.
[B] O P	1.—1 case containing 1 cast-iron gun	weighing	49	1	14
	2.—1 case containing 1 broadside carriage	„	12	0	14
	3.—1 case containing rammers, sponges, handspikes, &c. ..	„	2	1	14
[B] O P_2	1.—1 case containing 1 cast-iron gun	„	49	1	14
	2.—1 case containing 1 broadside carriage	„	12	0	14
	3.—1 case containing rammers, sponges, handspikes, &c. ..	„	2	0	10
[B] O P SOL	1 to 6.—6 cases containing 50 cast shot	„	13	1	20
[B] B SOL	1 to 6.—6 cases containing 50 cast shot	„	17	2	6
[B] B	1.—1 case containing brass vent covers	„	0	0	5
	Total weight		158	1	27

Total value, £220.

(Inclosure 3.)

Mr. Morgan to Mr. Stewart.

"Sir, "*Surveyor's Office, September* 3, 1862.

"I beg to report, for your information, that the British steam-ship Bahama, Tessier master, which vessel cleared out for Nassau, and sailed on the 13th ultimo with nineteen cases, contents as per specification annexed, has returned to this port, and entered inwards in ballast from Angra.

"The master of her is not disposed to enter very freely into conversation upon the subject, but from others on board there appears to be no doubt that the cases above referred to were transferred to the gun-boat No. 290.

"Captain Semmes, formerly of the Confederate steamer Sumter, took passage in the Bahama, together with some fifty other persons, and they are described as being the permanent crew of the 290, now known as the Alabama.

"Respectfully,
(Signed) "E. MORGAN, *Surveyor*."

The Bahama had cleared for Nassau in the ordinary way, with a cargo of munitions of war, which it was probable were intended for the Confederate States. Her clearance and departure presented, so far as Her Majesty's Government is aware, no circumstances distinguishing her from ordinary blockade-runners. No information was ever given or representation made to Her Majesty's Government as to this ship, or her cargo, before she left British waters. But even had a suspicion existed that her cargo was exported with the intention that it should be used, either in the Confederate States or elsewhere out of Her Majesty's dominions, in arming a vessel which had been unlawfully fitted in England for warlike employment, this would not have made it the duty of the officers of Customs to detain her, or empowered them to do so. Such a transaction is not a breach of English law, nor is it one which Her Majesty's Government was under any international obligation to prevent.

On the 5th of September, 1862, Earl Russell received from Mr. Adams a Note inclosing a letter from Mr. Dudley, and also a deposition purporting to be made by one Redden, a seaman, who had sailed in the Alabama on her outward voyage, and had returned in the Bahama to Liverpool. The Note and its inclosures were as follows:—*

Mr. Adams to Earl Russell.

"My Lord, "*Legation of the United States, London, September* 4, 1862.

"I have the honour to transmit the copy of a letter received from the Consul of the United States at Liverpool, together with a deposition in addition to the others already submitted with my notes of the 22nd and 24th of July, going to show the further prosecution of the illegal and hostile measures against the United States in connection with the outfit of the gun-boat No. 290 from the port of

* Appendix, vol. i, p. 209.

Liverpool. It now appears that supplies are in process of transmission from here to a vessel fitted out from England, and now sailing on the high seas, with the piratical intent to burn and destroy the property of the people of a country with which Her Majesty is in alliance and friendship. I pray your Lordship's pardon if I call your attention to the fact that I have not yet received any reply in writing to the several notes and representations I have had the honour to submit to Her Majesty's Government touching this flagrant case.

"Renewing, &c.
(Signed) "CHARLES FRANCIS ADAMS."

(Inclosure 1.)

Mr. Dudley to Mr. Adams.

"Sir, "*United States' Consutate, Liverpool, September* 3, 1862.

"I have just obtained the affidavit of the boatswain's mate who shipped in and went out in the No. 290, now called the Alabama. I inclose it to you, with bill for his services, signed by Captain Butcher. He returned on the Bahama. He states that the Alabama is to cruize on the line of packets from Liverpool to New York; that Semmes told them so. This may have been said for the purpose of misleading us. The barque that took out the guns and coal is to carry out another cargo of coal to her. It is to take it on either at Cardiff or Troon, near Greenock, in Scotland; the barque to meet the Alabama near the same island where the armament was put on board, or at least in that neighbourhood. There will be no difficulty to get other testimony if it is required.

"I am, &c.
(Signed) "THOS. H. DUDLEY.

"P.S.—There were two American vessels in sight when they parted with the Alabama, which Captain Semmes said he would take. They no doubt were taken and destroyed, the first-fruits from this vessel.

"T. H. D."

(Inclosure 2.)

Deposition of H. Redden.

"Henry Redden says:—I reside at 16, Hook Street, Vauxhall Road, and am a seaman.

"In April last I shipped as boatswain's mate of a vessel lying in Laird's Dock at Birkenhead, known as 290, and worked on board until she sailed.

"We sailed from Liverpool about 28th July; Captain Butcher was master; Mr. Law, a Southerner, was mate; Mr. Lawrence Young was purser. A Captain Bullock went out with us, but left with the pilot at Giant's Cove, near Londonderry. There were five ladies and a number of gentlemen went with us as far as the Bell Buoy. We went first to Moelfra Bay, near Point Lynas, when we anchored and remained about thirty hours. The Hercules tug brought down about forty men to us there; nothing else was then taken on board. Her crew then numbered ninety men, of whom thirty-six were sailors. She had no guns on board then, nor powder, nor ammunition. We left Moelfra Bay on the Thursday night at 12 o'clock, and steered for the North Channel. We discharged Captain Bullock and the pilot on Saturday afternoon. We first steered down the South Channel as far as Bardsea, when we 'bout ship and steered north. From Derry we cruized about until we arrived at Angra, eleven days after leaving Holyhead. About four days after we arrived, an English barque, ——, Captain Quinn, arrived from London with six guns, two of them 98-pounder (one rifled and the other smooth-bore) pivot guns, and four 38-pounder breech guns, smooth-bore broadside guns, 200 or 300 barrels of powder, several cases of shot, a quantity of slops, 200 tons of coal. She came alongside and made fast. We were anchored in Angra Bay about a mile and a half or two miles from shore. After being there about a week, and while we were taking the guns and ammunition on board, the authorities ordered us away. We went outside and returned at night. The barque was kept lashed alongside, and we took the remainder of the guns, &c., on board as we could. While we were discharging the barque, the steamer Bahama, Captain Tessier, arrived from Liverpool. Captain Bullock, Captain Semmes, and forty men came in her. She also brought two 38-pounder guns, smooth-bore, and two safes full of money in gold. She had a safe on board before, taken on board at Birkenhead. The Bahama was flying the British flag. The Bahama towed the barque to another place in the island, and we followed. The next morning we were ordered away from there, and went out to sea until night, when we returned to Angra Bay. The Bahama, after towing the barque away the evening of her arrival, came back to the Alabama, or 290, in Angra Bay, made fast alongside of her, and discharged the guns on board of her and the money.

"The men struck for wages, and would not then go on board. There were four engineers, a boatswain, and captain's clerk named Smith, also came in the Bahama, and they were taken on board the same evening. All three vessels continued to fly the British flag the whole time. The guns were mounted as soon as they were taken on board. They were busy at work getting them and the Alabama or 290 ready for fighting while the Bahama and the barque were alongside. On the Sunday afternoon following (last Sunday week) Captain Semmes called all hands aft, and the Confederate flag was hoisted, the band playing 'Dixie's Land.' Captain Semmes addressed the men, and said he was deranged in his mind to see his country going to ruin, and had to steal out of Liverpool like a thief. That instead of them watching him he was now going after them. He wanted all of us to join him,—that he was going to sink, burn, and destroy all his enemy's property, and that any that went with him was entitled to two-twentieths prize-money; it did not matter whether the prize was sunk, or burned, or sold, the prize-money was to be paid. That there were only four or five Northern ships that he was afraid of.

He said he did not want any to go that were not willing to fight, and there was a steamer alongside to take them back if they were not willing.

"The vessel was all this time steaming to sea, with the Bahama at a short distance. Forty-eight men, most of them firemen, refused to go, and an hour afterwards were put on board the Bahama. I refused to go, and came back with the rest in the Bahama. Captain Butcher, Captain Bullock, and all the English engineers came with us, and landed here on Monday morning. When we left the Alabama she was all ready for fighting, and steering to sea. I heard Captain Semmes say he was going to cruize in the track of the ships going from New York to Liverpool, and Liverpool to New York. The Alabama never steamed while I was in her more than eleven knots, and cannot make any more. We signed articles while in Moelfra Bay for Nassau, or an intermediate port. Captain Butcher got us to sign. The provisions were put on board at Laird's yard before sailing; they were for six months. When we left her she had about ninety men and eight guns mounted, three on each side and two pivots.

(Signed) "HENRY REDDEN."

"Declared and subscribed at Liverpool aforesaid, the 3rd day of September, 1862.

"Before me,

(Signed) "WILLIAM G. BATESON, *Notary Public, and a Commissioner to administer Oaths in Chancery.*"

Account.

August 31.—Henry Redden, at 6*l.* per month.

	£	*s.*	*d.*
One month and five days, at 4*s.*	7	0	0
Advance, 6*l.*; tobacco, 1*s.* 8*d.*	6	1	8
Amount due	£0	18	4

(Signed) "MATTHEW JAMES BUTCHER,
"*Master of Steam-ship* 290."

Earl Russell, on the 22nd September, 1862, replied as follows:—*

Earl Russell to Mr. Adams.

"Sir, "*Foreign Office, September* 22, 1862.

"I have the honour to acknowledge the receipt of your letter of the 4th instant, inclosing a copy of a letter from the United States' Consul at Liverpool, together with the deposition of Henry Redden, respecting the supply of cannon and munitions of war to the gun-boat No. 290. You also call attention to the fact that you have not yet received any reply to the representations you have addressed to Her Majesty's Government upon the subject.

"I had the honour, in acknowledging the receipt of your letter of the 23rd of June, to state to you that the matter had been referred to the proper Department of Her Majesty's Government for investigation. Your subsequent letters were also at once forwarded to that Department, but, as you were informed in my letter of the 28th of July, it was requisite, before any active steps could be taken in the matter, to consult the Law Officers of the Crown. This could not be done until sufficient evidence had been collected, and from the nature of the case some time was necessarily spent in procuring it. The Report of the Law Officers was not received until the 29th of July, and on the same day a telegraphic message was forwarded to Her Majesty's Government, stating that the vessel had sailed that morning. Instructions were then dispatched to Ireland to detain the vessel should she put into Queenstown, and similar instructions have been sent to the Governor of the Bahamas in case of her visiting Nassau. It appears, however, that the vessel did not go to Queenstown, as had been expected, and nothing has been since heard of her movements.

"The officers of Customs will now be directed to report upon the further evidence forwarded by you, and I shall not fail to inform you of the result of the inquiry.

"I am, &c.

(Signed) "RUSSELL."

Mr. Adams' Note, with its inclosures, having been referred to the Commissioners of Customs, they, on the 25th September, 1862, reported as follows:—†

The Commissioners of Customs to the Lords Commissioners of the Treasury.

"*Custom-House, September* 25, 1862.

"Your Lordships having, by Mr. Arbuthnot's letter of the 16th instant, transmitted to us, with reference to Mr. Hamilton's letter of the 2nd ultimo, the inclosed communication from the Foreign Office, with copies of a further letter, and its inclosures, from the United States' Minister at this Court respecting the supply of cannon and munitions of war to the gun-boat No. 290, recently built at

* Appendix, vol. i, p. 211.

† Ibid., p. 213.

Liverpool, and now in the service of the so-called Confederate States of America, and your Lordships having desired that we would take such steps as might seem to be required in view of the facts therein represented, and report the result to your Lordships;

"We have now to report—

"That assuming the statements set forth in the affidavit of Redden (who sailed from Liverpool in the vessel) which accompanied Mr. Adams' letter to Earl Russell to be correct, the furnishing of arms, &c., to the gun-boat does not appear to have taken place in any part of the United Kingdom, or of Her Majesty's dominions, but in or near to Angra Bay in the Azores, part of the Portuguese dominions. No offence, therefore, cognizable by the laws of this country appears to have been committed by the parties engaged in the transactions alluded to in the affidavit.

"With respect to the allegation of Redden that the arms, &c., were shipped on board the 290 in Angra Bay, partly from a barque (name not given) which arrived there from London, commanded by Captain Quinn, and partly from the steamer Bahama from Liverpool, we beg to state that no vessel having a master named Quinn can be traced as having sailed from this port for foreign parts during the last six months. The Knight Errant, Captain Quine, a vessel of 1,342 tons burthen, cleared for Calcutta on the 12th April last with a general cargo, such as is usually exported to the East Indies, but, so far as can be ascertained from the entries, she had neither gunpowder nor cannon on board.

"The Bahama steamer cleared from Liverpool on the 12th ultimo for Nassau. We find that Messrs. Fawcett, Preston, and Co., engineers and ironfounders, of Liverpool, shipped on board that vessel nineteen cases containing guns, gun-carriages, shot, rammers, &c., weighing in all 158 cwt. 1 qr. 27 lbs. There was no other cargo on board, excepting 552 tons of coals for the use of the ship; and the above-mentioned goods having been regularly cleared for Nassau in compliance with the Customs laws, our officers could have no power to interfere with their shipment.

"With reference to the further statement in the letter of Mr. Dudley, the Consul of the United States at Liverpool, that the barque that took out the guns and coal is to carry out another cargo of coal to the gun-boat 290, either from Cardiff or Troon, near Greenock, we have only to remark that there would be great difficulty in ascertaining the intention of any parties making such a shipment, and we do not apprehend that our officers would have any power of interfering with it were the coals cleared outwards for some foreign port in compliance with the law.

(Signed) "F. GOULBURN.
"W. R. GREY."

A copy of this Report was sent to Mr. Adams by Earl Russell.

As to the vessel stated in Redden's deposition to have been commanded by a Captain Quinn, she may perhaps have been the Agrippina, M'Queen master, which appears, by the register of clearances kept in the port of London to have cleared from that port for Demerara in August 1862.

Her Britannic Majesty's Government has reason to believe that Butcher, whilst the vessel afterwards called the Alabama was in the waters of the Azores, falsely stated both to the Portuguese officials and to the British Vice-Consul that she was the steam-ship Barcelona, from London to Nassau, and that he desired only to coal the vessel in smooth water, having no occasion to communicate with the town. These false statements were made in order to escape interference on the part of the authorities of Terceira.

Depositions purporting to be made by other persons who had taken service in the Alabama, and had afterwards left that ship during her cruize, were afterwards furnished to Her Majesty's Government by Mr. Adams. Among these was a deposition purporting to be made by one John Latham, part of which was as follows:—*

Deposition of John Latham.

Extract.)

"I, John Latham, of 36, Jasper Street, Liverpool, in the county of Lancaster, engineer, make oath, and say as follows:—

"1. About the 8th or 10th of August, 1862, I signed articles at the Sailors' Home, Liverpool, to ship in the steam-ship Bahama, Captain Tessier, for a voyage to Nassau and back. The Bahama went out of the Bramley Moore Dock the same night about 12 o'clock, and went into the river and lay-to. Captain Semmes, Captain James D. Bullock, and some other officers came on board, and about half-past 7 o'clock A.M. a tug-boat came alongside with some seamen on board; the tug-boat accompanied us out about ten miles. The tug then left us, and a tall gentleman, with a reddish face and pock-marked, who came from Cunard, Wilson, and Co.'s office, left us and went into the tug; as he left us, he said, 'I hope you will make a good thing of it, and that you will stop where you are going to.' We then proceeded on our voyage, and stood out some days, when we found we were going to the Western Isles.

"2. About the 17th or 18th of August we arrived at Terceira, and we there found the Alabama and the barque Agrippina. Captain Butcher, who was on board the Alabama, hailed us and told us to go round the island, and he would be after us, but it would take them three-quarters of an hour to get his steam up. We went on, and he followed us, and the Alabama went under the lee of the island, and a shot was fired across the Bahama's bows from a battery on shore, so we stopped out until the

* Appendix, vol. i, p. 226.

morning. In the morning we went alongside the Alabama, and some small cases and a safe containing money was passed into the Alabama from our ship, and we then parted and anchored a little distance from her, and the barque Agrippina went and discharged the remainder of her cargo into the Alabama. During this time Captain Semmes and Captain Bullock were going backwards and forwards to the Alabama, but would not let any of the officers go. On Sunday, the 24th of August, Captain Semmes came on board the Bahama, and called us under the bridge, he himself and the officers standing on the bridge; he addressed us and said, 'Now my lads, there is the ship' (pointing to the Alabama); 'she is as fine a vessel as ever floated; there is a chance which seldom offers itself to a British seaman, that is, to make a little money. I am not going to put you alongside of a frigate at first; but after I have got you drilled a little, I will give you a nice little fight.' He said, 'There are only six ships that I am afraid of in the United States' Navy.' He said, 'We are going to burn, sink, and destroy the commerce of the United States; your prize-money will be divided proportionately according to each man's rank, something similar to the English navy.' Some of the men objected, being Naval Reserve men. Captain Semmes said, 'Never mind that, I will make that all right; I will put you in English ports where you can get your book signed every three months.' He then said, 'There is Mr. Kell on the deck, and all those who are desirous of going with me let them go aft, and give Mr. Kell their names.' A great many went aft, but some refused. A boat came from the Alabama, and those who had agreed to go went on board. Captain Semmes and the officers went on board. Mr. Low, the Fourth Lieutenant, then appeared in uniform, and he came on board the Bahama, endeavouring to induce the men to come forward and join, and he succeeded in getting the best part of us. I was one who went at the last minute. When I got on board the Alabama, I found a great number of men that had gone on board of her from Liverpool. Captain Semmes then addressed us on board the Alabama, and Captain Butcher was there also, who had taken the vessel out. Captain Semmes said he hoped we should all content ourselves and be comfortable one amongst another; but any of you that thinks he cannot stand to his gun I don't want. He then called the purser, and such as agreed to serve signed articles on the companion-hatch, and on signing the men received either two months' pay in advance, or one months' wages and a half-pay note. I took a month's wages and a half-pay note for 3*l.* 10*s.* a month in favour of my wife, Martha Latham, 19, Wellington Street, Swansea; the note was drawn on Fraser, Trenholm, and Co., of Liverpool, but it was paid at Mr. Klingender's in Liverpool; the note was signed by Captain Semmes, Yonge, who was the Paymaster, and Smith, the Captain's clerk. I sent 5*l.* and this half-pay note ashore by Captain Bullock, and he forwarded it with a letter to my wife.

"3. Captain Bullock, on the passage out, and after we arrived at Terceira, used arguments to induce us to join the Alabama. On several occasions he advised us, and urged the men to join.

"4. As soon as the men who had consented to go had all signed articles, the English ensign which the Alabama had been flying, was pulled down, and the Confederate flag hoisted, and a gun was fired. The men who declined joining left the ship with Captains Bullock and Butcher for the Bahama, and we proceeded, under the command of Captain Semmes."

Her Majesty's Government neither affirms nor denies the truth of the statements of these persons, some of which statements, however, it has reason to believe to be incorrect. But Her Majesty's Government believes it to be true that the vessel known at first as the 290, and afterwards as the Alabama, having left Her Majesty's dominions unarmed, was armed for war after arriving at the Azores, either wholly in Portuguese waters, or partly in Portuguese waters and partly on the high seas; that her crew were, after her arrival at the Azores, hired and signed Articles for service in the Confederate Navy, either in Portuguese waters or on the high seas; that Captain Semmes took command of her after she arrived at the Azores; and that, after she had been armed as aforesaid, she was commissioned (being then out of the dominions of Her Britannic Majesty) as a ship-of-war of the Confederate States. Her Captain and officers were, as Her Majesty's Government believes, all American citizens, and were at the time commissioned officers in the Confederate service, except the Assistant-Surgeon, who was a British subject. John Low, one of the Lieutenants, who has been stated to have been an Englishman, was, as Her Majesty's Government believes, a citizen of the State of Georgia. Of the common seamen and petty officers Her Majesty's Government believes that a considerable number were British subjects, who were induced by Captain Semmes (himself an American citizen) to take service under him; but the ship's company was afterwards largely increased by the addition of many American seamen, drawn from the crews of United States' vessels captured by the Alabama during her cruize. In this way her crew, which is stated to have numbered about 84 men when the ship left the Azores, had increased to nearly 150 when she arrived at Martinique.

In the above-mentioned deposition of John Latham, which was received by Her Majesty's Government from Mr. Adams on the 13th January, 1854, it was stated that a considerable number of the seamen who had been induced to take service in the ship belonged to the Royal Naval Reserve; and a list or schedule was given, purporting to be a list of the crew, and to specify the names of nineteen such seamen. Inquiries were thereupon made at the Admiralty with reference to the matter; and the subjoined letters, addressed by the Secretary of that Department to one of the Under-Secretaries of State for Foreign Affairs, show both what steps had been previously taken by the Lords

Commissioners of the Admiralty, and what was afterwards done in consequence of such inquiries:—*

The Secretary to the Admiralty to Mr. Hammond.

"Sir, "*Admiralty, June* 24, 1864.

"With reference to your letter of the 21st instant, relative to the statement that many of the crew of the late Confederate ship Alabama were Naval Reserve men, I am commanded by my Lords Commissioners of the Admiralty to acquaint you, for the information of Earl Russell, that the only men who were suspected of having joined Confederate vessels, and who were ascertained to be improperly absent, were discharged from the Naval Reserve force on the 25th January last.

"My Lords, however, concur with his Lordship that it will be desirable to ascertain whether any of the men on board the Alabama did belong to the Naval Reserve, and they will take the necessary steps as requested.

"I am, &c.
(Signed) "C. PAGET.'

The Secretary to the Admiralty to Mr. Hammond.†

"Sir, "*Admiralty, January* 29, 1864.

"In reply to your letter of the 22nd instant, respecting the Naval Reserve men who are said to form part of the crew of the Confederate steam-ship Alabama, I am commanded by my Lords Commissioners of the Admiralty to acquaint you, for the information of Earl Russell, that only three of the nineteen men described in the printed list as Naval Reserve men can be identified, viz., David Roach, Peter Hughes, and Michael Mars; and, of those three, the last (Mars) has been already discharged, in consequence of having joined the Alabama, as will be seen by the inclosed copy of a Report from the Registrar-General of Seamen, who has been directed to make inquiries on the subject.

"I return the printed list of the crew, which accompanied your letter, with the Registrar-General's notations against the names.

"I am, &c.
(Signed) "C. PAGET."

Mr. Mayo to the Commodore Comptroller-General of the Coast Guard.

"Sir, "*General Register and Record Office of Seamen, January* 27, 1864.

"In accordance with the request contained in your letter of the 25th instant, I beg to acquaint you, for the information of the Lords Commissioners of the Admiralty, that the register books of the Royal Naval Reserve have been searched, with a view of ascertaining whether the nineteen men described in the annexed list as forming part of the crew of the Alabama belong to the Royal Naval Reserve, and the following is the result of the investigation:—

"A seaman of the name of David Roach (R.N.R. No. 11,919) is reported to have been at Liverpool on the 2nd of October, 1862, and a seaman of the name of Peter Hughes (R.N.R. No. 10,849) is reported to have been discharged from the Great Eastern, at Liverpool, on the 16th June, 1862. As on subsequent account has been received of either of these Naval Reserve men, it is possible that they may be the same men as David Roach and Peter Hughes described in the accompanying list of the crew of the Alabama; but of this I have no proof.

"A seaman of the name of Michael Mars formerly belonged to the Royal Naval Reserve, but he was discharged from the force, in consequence of having joined the Alabama. With regard to the remaining sixteen men, who are said to be members of the Royal Naval Reserve, I have to state that I have not been able to trace them in our books by the names given. No persons of the names of William Brinton, Brent Johnson, Samuel Henry, John Duggan, Joseph Connor, William Purdy, Malcolm Macfarlane, John Emory, William Nevins, and William Hearn, have been enrolled in the Reserve, and I am unable to identify as members of the Royal Naval Reserve the seamen serving on board the Alabama in the following names, for the reasons given:—William Crawford, native and resident of Aberdeen, and not of Liverpool; James Smith, thirty-two enrolled of this name; John Neil, sailed in Goldfinder, 11th April, 1862—no account since; Thomas Williams, seventeen enrolled of this name; Robert Williams, six enrolled of this name.

"I have, &c.
(Signed) "F. MAYO, *Registrar-General.*"

The Secretary to the Admiralty to Mr. Hammond.‡

"Sir, "*Admiralty, July* 27, 1864.

"I am commanded by my Lords Commissioners of the Admiralty to acquaint you, for the information of Earl Russell, that the Board of Trade have succeeded in identifying three of the late Confederate ship Alabama's men as Naval Reserve men, viz., Thomas McMillan, Peter Hughes, Charles Seymour, and that their Lordships have ordered them to be dismissed from the force.

"I am, &c.
(Signed) "W. G. ROMAINE.'

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* Appendix, vol. i, p. 237. † Ibid., p. 233. ‡ Ibid., p. 237.

With respect to the greater number of the names entered in the aforesaid schedule, it was found that no persons bearing those names had in fact been enrolled in the Naval Reserve.

The subsequent history of the Alabama, so far as it is known to Her Britannic Majesty's Government, from the Reports of its Colonial officers and from other sources, is as follows.

On or about the 18th November, 1862, the Alabama arrived at Martinique, and anchored in the harbour of Fort de France, where she received permission from the Governor to remain for such time as she needed, and to land her prisoners. Her Britannic Majesty's Consul at St. Pierre, in a Report made at the time, stated that shortly before her arrival, suspecting that preparations were being made for her to coal there, he had communicated the grounds of his belief to the Governor. The following is an extract from the Report:—

"I next deemed it proper to acquaint the Governor with what I had just learned. He did not seem much surprised, and observed that, if the Alabama came into port, he would act exactly as he had done on a former occasion in the case of the Sumter, when the French Government had altogether approved of the measures he had taken in regard to that vessel."

The Alabama remained at Fort de France till the evening of the 19th, when she put to sea, eluding the pursuit of the United States' war-steamer San Jacinto, which was keeping watch for her within view of the shore, but outside of the territorial waters of the island.

On the 20th January, 1863, the Alabama came into the harbour of Port Royal, Jamaica, and her Commander applied for leave to land the prisoners he had made in his recent engagement with the United States' war-steamer Hatteras. This application was granted by the Lieutenant-Governor, in the following letter to Commodore Dunlop, the Senior Naval Officer at the port:—*

Lieutenant-Governor Eyre to Commodore Dunlop.

"Sir, "*King's House, January* 21, 1863.

"I have the honour to acknowledge the receipt of your letter of the 21st instant, and beg to acquaint you, in reply, that, having consulted with the Attorney-General, I do not see any grounds for objecting to the landing of the prisoners taken by the Alabama.

"Common humanity would dictate such a permission being granted, or otherwise fever or pestilence might arise from an overcrowded ship.

"Probably the best course would be to reply to Captain Semmes' application, that this Government will not interfere with his landing any persons he may think proper.

"Of course, once landed, no persons could be re-embarked against their will from British soil.

"I have, &c.

(Signed) "E. EYRE."

The following letters, addressed by Commodore Dunlop to the Vice-Admiral in command on the West Indian Station, contain an account of what occurred in relation to the Alabama while she remained at Port Royal:—

Commodore Dunlop to Vice-Admiral Sir A. Milne.†

"Sir, "*Aboukir, at Jamaica, January* 23, 1863.

"I have the honour to inform you that, on the evening of the 20th, a screw-steamer, apparently a man-of-war, was seen off this port about sunset, under French colours. After dark the vessel entered the harbour, and upon being boarded proved to be the screw gun-vessel Alabama, under the so-called Confederate States' flag.

"2. On the morning of the 21st her commander, Captain Semmes, called on me and asked for permission to land 17 officers and 101 men, the crew of the late United States' gun-vessel Hatteras, which had engaged the Alabama twenty-five miles south-east of Galveston, Texas, during the night of the 11th January, and was sunk. The action, according to Captain Semmes' account, lasted from 13 to 15 minutes, when the Hatteras, being in a sinking state, ceased firing, and the crew were removed on board the Alabama, which there was just time to effect before the Hatteras went down.

"3. In answer to Captain Semmes' application to land his prisoners, I replied that I had no authority to give such permission, but would immediately inform his Excellency the Lieutenant-Governor of his request, and let him know the answer I received as soon as possible.

"4. I have the honour to annex copies of my correspondence with his Excellency and his reply, relative to landing the prisoners, also copy of his Excellency's letter to me, to notify to the Captain of

* Appendix, vol. i, p. 265.

† Ibid., p. 264.

the Alabama the instructions contained in the 3rd paragraph of Earl Russell's despatch to the Duke of Newcastle, and my reply thereto, as well as a copy of my letter to Captain Semmes, inclosing a copy of the 3rd and 4th paragraphs of the despatch referred to above.

"5. Captain Semmes then stated that he had six large shot-holes at the water-line, which it was absolutely necessary should be repaired before he could proceed to sea with safety, and asked permission to receive coal and necessary supplies. The necessity of the repairs was obvious, and I informed Captain Semmes that no time must be lost in completing them, taking in his supplies, and proceeding to sea in exact conformity with the spirit of Earl Russell's despatch. Captain Semmes gave me his word of honour that no unnecessary delay should take place, adding, 'My interest is entirely in accordance with your wishes on this point, for if I remain here an hour more than can be avoided I shall run the risk of finding a squadron of my enemies outside, for no doubt they will be in pursuit of me immediately.'

"Owing to the delay in receiving the Lieutenant-Governor's answer to my letter relative to landing the prisoners from Spanish Town, it was not until the evening of the 21st that the permission to do so reached Captain Semmes, and too late for them to be landed that night. The crowded state of the vessel previous to the landing of the prisoners on the morning of the 22nd made it difficult to proceed with the necessary repairs, and no doubt caused some unavoidable delay. As soon as these repairs are completed, the Alabama will proceed to sea.

"I am, &c.
(Signed) "HUGH DUNLOP."

*Commodore Dunlop to Vice-Admiral Sir A. Milne.**

"Sir, "*Aboukir, at Jamaica, February* 7, 1863.

"In order to anticipate any exaggeration or false reports that may be circulated in the American newspapers or otherwise, relative to the visit of the Confederate gun-vessel Alabama at this port, and so to save unnecessary correspondence, I have the honour to state herein, for your information, the whole of the circumstances attending the visit of that vessel from her arrival to the time of her departure from Jamaica.

"2. As reported in my letter of the 23rd January, the Alabama anchored in this port after dark on the evening of the 20th. She commenced repairing the damages received in action with the Federal gun-vessel Hatteras, the next morning, at the same time receiving a supply of provisions and coal.

"3. The Lieutenant-Governor's permission for the prisoners to land not having reached me until the evening of the 21st, they did not leave the Alabama until the morning of the 22nd, when they proceeded to Kingston in shore boats, which were provided by the United States' Consul.

"4. The Commander of the late United States' gun-vessel Hatteras did not call on me, or send me any communication whatever during his stay in this island.

"5. At 9·30 A.M. on the morning of the 21st, the Captain of the Jason waited on me to ask if I had any objections to officers of the ships in harbour going on board the Alabama? to which I answered that, as it might be hurtful to the feeling of the officers and men prisoners on board the Alabama, on no account was any one from any of Her Majesty's ships to visit that vessel until after all the prisoners were landed.

"6. It having subsequently been reported to me that some officers had been on board the Alabama prior to the landing of the prisoners, I called on the Captains and Commanders of the different ships to report to me in writing whether any officer under their command had acted contrary to my order. I found from the Reports that four officers of the Challenger, four officers of the Cygnet, and one of the Greyhound had gone on board the Confederate gun-vessel before my order was made known.

"I regret that the Captains and Commanders of these ships should have given permission to their officers previous to communicating with me on the subject, though it was done entirely from thoughtlessness, forgetting that there could be any objection to it. The Commander of the Cygnet was in hospital, and therefore is not responsible for the officers of that ship going on board the Alabama.

"8. I annex a copy of a Report from Commander Hickley relative to the tune of 'Dixie's Land' having been played on board the Greyhound shortly after the Alabama anchored, and copy of a correspondence between him and Lieutenant-Commander Blake, of the United States' Navy, relative to the same. After the explanation that took place, Lieutenant-Commander Blake expressed himself to Commander Hickley as perfectly satisfied that no British officer or gentleman would have been guilty of insulting gallant men suffering from a misfortune to which the chances of war render all liable. I severely reprimanded the Lieutenant of the Greyhound who ordered the Confederate air to be played, and he expressed his regret for having done so.

"9. The fractures made by six large shot or shell near the waterline of the Alabama required extensive repairs, which could not be completed by the unskilful workmen hired here before late in the afternoon of the 25th, and the Alabama sailed at 8·30 P.M. of the same evening.

"10. In conclusion I have only to state that the Confederate vessel was treated strictly in accordance with the instructions contained in Earl Russell's letter of the 31st January, 1862, and exactly as I shall act towards any United States' man-of-war that may hereafter call here.

"11. Two United States' ships of war, the Richmond and Powhattan, arrived here in 1861, coaled and provisioned, and remained in port, the Richmond four days, and the Powhattan three days; the San Jacinto was also here, and remained four hours.

"I have, &c.
(Signed) "HUGH DUNLOP."

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* Appendix, vol. i, p. 268.

On the 11th May, 1863, the Alabama arrived at Bahia, having previously touched at the Brazilian Island of Fernando de Noronha. About the same time the Florida and Georgia, Confederate war-steamers, were likewise in Brazilian ports, where they were permitted to purchase coal and provisions and to refit.

The United States' Minister at Rio de Janeiro hereupon wrote in very warm terms to the Brazilian Minister of Foreign Affairs, arguing that all the three vessels were piratical, and should be treated as such; affirming further that the Alabama, whilst at Fernando de Noronha, had violated the neutrality of Brazil by making prize of United States' vessels within the territorial waters of the Empire; insisting that it was the duty of the Emperor's Government to capture her; and threatening that, if this were not done, the Brazilian Government should be held responsible by the Government of the United States. In a despatch dated the 21st May, 1863, he wrote as follows:—*

"The Georgia lands prisoners avowedly taken from a captured American ship, and asks permission of the Governor of Bahia to coal and buy provisions, and the permission is cordially granted.

"The Florida lands her prisoners, officers, crews, and passengers of American vessels captured and burned, and not only asks and receives permission to coal and purchase provisions, but, further, asks to be allowed whatever time is necessary to repair her engine and *refit* for her work of destruction; and, in defiance of the solemn and most earnest protest of the Consul of the United States, this privilege is accorded to her by the Governor of Pernambuco, from a desire *not to diminish his means of defence and security!*

"The Alabama goes into Bahia, and does not even ask permission to remain. She arrived on the 11th, and was still there when the Guienne sailed on the 14th. The Consul of the United States protested against her presence, and demanded that she should be seized and held subject to the orders of the Brazilian Government, for having destroyed American property in Brazilian waters, for which the Government of the United States will hold Brazil responsible, if, now that the opportunity presents, the authorities do not vindicate the sovereignty of Brazil and capture the pirate. The Governor of Bahia sends to the United States' Consul the communication of the Governor of Pernambuco to the captain of the pirate, complaining of his piracies, charging him with a violation of Brazilian sovereignty, and ordering him, in consequence of such disgraceful conduct, to leave the waters of Brazil within twenty-four hours. The Governor of Bahia thus demonstrates that he knows the piratical character of this vessel, and is familiar with her violation of the sovereignty of Brazil by destroying American vessels within the waters of that empire. He knows, too, that the Imperial Government, by its acts, had proclaimed this pirate guilty of violations of its sovereignty, and ordered him to leave their port of Fernando Noronha; and yet he deliberately permits him to enter the port of Bahia, refuses to regard the protest of our Consul, and, at the last accounts, had harboured him four days without pretending that his presence was not acceptable!

"Thus, at this moment, the ports of Brazil are made harbours of refuge and places of resort and departure for three piratical vessels, avowedly designed to prey upon the commerce of the United States. The waters of Brazil are violated with impunity in this piratical work, and after the Imperial Government had admitted and declared its indignation at such violation of sovereignty, the guilty party is received with hospitality and friendship by the Governor of Bahia, and instead of being captured and imprisoned, and his vessel detained, he is fêted, and supplied with the necessary provisions and coal, to enable him to continue his depredations upon American commerce. The wharves and streets of Bahia and Pernambuco have been, for weeks past, swarmed with American sailors and passengers from merchantmen trading with Brazil, which have been captured, and the persons on board robbed, by the pirates of the Alabama, Florida, and Georgia, and they have been compelled, in the ports of a friendly nation, to witness their clothing and jewellery, and even family relics, sold on the wharves and in the streets of Bahia and Pernambuco, by their piratical captors, at a tenth of their value; while the piratical vessels and all on board were received and treated as friends, and supplied with the necessary materials to continue their nefarious practices. The scenes which history informs us were rife in the seventeenth century, in the islands of the West Indies, are now being enacted in this the nineteenth century, in the ports of Brazil, and that through no fault of the Imperial Government—which has already done its whole duty as rapidly as circumstances have permitted—but because the Governors of Pernambuco and Bahia, in their sympathy with piracy and pirates, have neglected their duty to Brazil, and brought discredit upon the civilization of the age.

"Your Excellency is aware that the facts in connection with the presence of these piratical vessels in the ports of Brazil are even stronger than in this hasty communication they are presented; and, therefore, the Undersigned will not for a moment doubt but the Imperial Government will promptly visit upon the offending Governors the punishment they have so richly merited. But it appears to the Undersigned that the Government of Brazil has still another duty to perform, itself, to the Government of the United States, to humanity, and to the civilization of the age, and that is the capture of the Alabama whenever she enters a Brazilian harbour. That piratical vessel has violated the sovereignty of Brazil by destroying the vessels of a friendly nation within the waters of the Empire. The Government of Brazil, by its acts, has proclaimed this fact; and, most assuredly, if, when it has the power to do so, it does not capture and detain the offender, it makes itself a party to his acts, and compels the Government of the United States not only to look to Brazil for compensation for injuries done to its commerce within its waters, but also to hold Brazil responsible for permitting this pirate to proceed in his depredations upon American commerce.

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* Appendix, vol. i, p. 280.

"The Undersigned does not visit upon the Imperial Government the conduct of its Governors towards the Florida and Georgia, well knowing that it will, as heretofore, do its duty in the premises. But the case of the Alabama is a very different one. She has violated the neutrality, and outraged the sovereignty of Brazil, by capturing and burning American vessels in Brazilian waters; and if, when Brazil possess the ability, and the opportunity offers, she does not take possession of her, assuredly, the Government of Brazil assumes the responsibility of her acts, and the United States will be compelled to look for redress to Brazil, as she did to Portugal in the case of the General Armstrong."

The course taken by the United States' Minister was approved by his Government.

The Minister of Foreign Affairs for the Empire of Brazil replied as follows to the complaints of the Minister of the United States:—*

The Marquis d'Abrantes to Mr. Webb.

"*Ministry of Foreign Affairs,*
"*Rio de Janeiro, May* 23, 1863.

(Translation.)

"I hasten to acknowledge the reception of the note which, under date of the 21st instant, Mr. James Watson Webb, Envoy Extraordinary and Minister Plenipotentiary of the United States at this Court has done me the honour to address to me, with a view of calling my attention to a serious violation of neutrality which has been perpetrated, and is now being perpetrated, by two Representatives of the Imperial Government in the ports of Pernambuco and Bahia.

"Mr. Webb, in referring to the proceedings of the Presidents of said provinces towards the steamers of the Confederate States which come into their ports, accuses said Presidents, and complains of their having afforded hospitality to those steamers, and of having permitted them to make repairs, to receive provisions, and to land merchandize of vessels which they had captured.

"Mr. Webb bases his complaints on a series of acts which he enumerates, and which he characterizes as violative of the neutrality which the Government of His Majesty the Emperor imposes on itself in the deplorable contest of the American Union.

"The affair in question is undoubtedly grave and important, and the Imperial Government gives to the authorized language of Mr. Webb all the consideration which is due to it.

"But for this very reason, and Mr. Webb will certainly acknowledge it, the Imperial Cabinet is under the unavoidable necessity of proceeding in such a delicate matter with the greatest discretion and prudence, in order to observe religiously the position which it has assumed since the manifestation of the first events which tended to the result of a division of the United States.

"The position to which I allude Mr. Webb perfectly understands, as he also understands the principles on which it rests, since they were laid down in a Circular which was issued by the Imperial Government to its delegates in the provinces, under date of the 1st of August, 1861.

"Conforming to the rules generally admitted among civilized nations, the Imperial Government in that Circular prescribes the practical mode of rendering effective the neutrality which it imposes on itself.

"Without at present confirming or denying the acts as set forth by Mr. Webb, and without entering into an appreciation of the observations with which he accompanies the narration of them, what I can at once most positively declare to him is, that the Government of His Majesty the Emperor is firmly resolved to maintain, and to cause to be respected, the neutrality, in the terms in which it has declared it assumed it, and what is important to declare, that it is not disposed to allow this neutrality to be violated in any way by those interested in the contest, and still less by the delegates of the Government itself.

"Of the sincerity of this declaration Mr. Webb has an indisputable proof in my note of the 7th instant relative to the steamer Alabama, of the Confederate States, as in it I voluntarily hastened to bring to the knowledge of Mr. Webb not only the official communications which the Imperial Government has received in regard to the acts committed at Pernambuco by that steamer, but also the resolutions adopted by the Government to approve entirely of the proceedings on that occasion of the President referred to, and to resort to the necessary measures to repress the abuses of the Captain of the Alabama, and cause the neutrality of the Empire to be religiously observed.

"Therefore Mr. Webb, certain as he must be of the intentions of the Imperial Government, and of all the respect which this Government pays to his word, will assuredly not be surprised that, before coming to a final decision on the important acts which form the subject of the note with which I am now occupied, the Imperial Government should hear what their delegates in the provinces have to relate, and should strive scrupulously to verify their exactness.

"By the French packet which leaves this port on the 25th instant, the Imperial Government sends the most positive and conclusive orders to the Presidents of Bahia and Pernambuco that, without loss of time, they will circumstantially report in regard to each of the acts alleged in the note of Mr. Webb, of which he gives to them full information.

"And, as soon as the Reports referred to shall arrive, Mr. Webb may rely that the Imperial Government will not hesitate to put forth its hand to the means necessary to render effective the neutrality which it imposes on itself, provided it has been violated, and to leave beyond all doubt the fairness of its proceeding.

"Flattering myself that this brief answer will tranquillize Mr. Webb, I profit by the occasion, &c.

(Signed) "MARQUIS D'ABRANTES."

* Appendix, vol. i, p. 283.

The Government of Brazil in this Note adhered to the position which it had assumed at the commencement of the war by its Circular of 1st August, 1861. The Circular contained the following passage :—*

"The Confederate States have no recognized existence ; but, having constituted a distinct Government *de facto*, the Imperial Government cannot consider their naval armaments as acts of piracy, nor refuse them, with the necessary restrictions, the character of belligerents which they have assumed."

It being alleged, however, and (as it appears) proved, that the Alabama had made prizes within the territorial waters of the Island of Fernando de Noronha, and that the Governor of that island had taken no steps to prevent this or protest against it, he was deprived of his office by the President of the Province ; and this act was approved by the Brazilian Government. The Alabama remained in the port of Bahia for eight or nine days.

Some further correspondence passed between Mr. Webb and the Brazilian Minister of Foreign Affairs, in the course of which the latter vindicated the conduct of the Presidents of the Provinces of Pernambuco and Bahia, and declared that, since Brazil had originally recognized the Confederate States as belligerents, and had not withdrawn that recognition, and the "Florida," "Georgia," and "Alabama" bore the flag and commission of those States, these vessels had been rightly treated as belligerent vessels of war. He informed Mr. Webb, however, that since the "Alabama" appeared to have violated the neutrality of Brazil by using Rata Island as a base of hostile operations, she would not in future be admitted into any Brazilian port.†

On or about the 29th July, 1863, the Alabama arrived at Saldanha Bay, on the south-west coast of Africa, and in the vicinity of Cape Town.

The Consul of the United States at Cape Town, on the 4th August, 1863, addressed the following letter to Sir Philip Wodehouse, Governor of the Cape Colony :—‡

"*United States' Consulate, Cape Town, August* 4, 1863.

"His Excellency Sir Philip E. Wodehouse.

"Sir,

"From reliable information received by me, and which you are also doubtless in possession of, a war-steamer called the Alabama is now in Saldanha Bay being painted, discharging prisoners of war, &c.

"The vessel in question was built in England, to prey upon the commerce of the United States of America, and escaped therefrom while on her trial trip, forfeiting bonds of 20,000*l.*, which the British Government exacted under the Foreign Enlistment Act.

"Now, as your Government has a Treaty of Amity and Commerce with the United States, and has not recognized the persons in revolt against the United States as a Government at all, the vessel alluded to should be at once seized and sent to England, from whence she clandestinely escaped. Assuming that the British Government was sincere in exacting the bonds, you have doubtless been instructed to send her home to England, where she belongs. But if, from some oversight, you have not received such instructions, and you decline the responsibility of making the seizure, I would most respectfully protest against the vessel remaining in any port of the Colony another day. She has been at Saldanha Bay four [six] days already, and a week previously on the coast, and has forfeited all right to remain an hour longer by this breach of neutrality. Painting a ship does not come under the head of 'necessary repairs,' and is no proof that she is unseaworthy ; and to allow her to visit other ports after she has set the Queen's Prolamation of neutrality at defiance, would not be regarded as in accordance with the spirit and purpose of that document.

"Yours, &c.

(Signed) "WALTER GRAHAM, *United States' Consul.*"

The statement in this letter that bonds had been exacted and forfeited was entirely erroneous. No such bonds had been given or forfeited, nor could they have been required by British law. The Consul's letter was answered as follows :—§

"*Colonial Office, August* 5, 1863.

"Sir,

"I am directed by the Governor to acknowledge the receipt of your letter of yesterday's date, relative to the Alabama.

"His Excellency has no instructions, neither has he any authority, to seize or detain that vessel ; and he desires me to acquaint you that he has received a letter from the Commander, dated the 1st instant, stating that repairs were in progress, and as soon as they were completed he intended to go to sea. He further announces his intention of respecting strictly the neutrality of the British Government.

"The course which Captain Semmes here proposes to take is, in the Governor's opinion, in conformity with the instructions he has himself received relative to ships of war and privateers belonging to the

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* Appendix, vol. i, p. 284. † Ibid., pp. 288–300. ‡ Ibid., p. 300. § Ibid., p. 301.

United States and the States calling themselves the Confederate States of America visiting British ports.

"The reports received from Saldanha Bay induce the Governor to believe that the vessel will leave that harbour as soon as her repairs are completed; but he will, immediately on receiving intelligence to the contrary, take the necessary steps for enforcing the observance of the rules laid down by Her Majesty's Government.

"I have, &c.
(Signed) "L. ADAMSON,
"For the Colonial Secretary."

The facts which occurred, and the questions which arose, whilst the Alabama remained within the limits of the Cape Colony, are stated in the following despatch, addressed by the Governor to Her Majesty's Secretary of State for the Colonies:—*

Governor Sir P. Wodehouse to the Duke of Newcastle.

(Extract.) "*Government House, Cape Town, August* 19, 1863.

"I beg to take this opportunity of making your Grace acquainted with what has occurred here in connection with the visit of the Confederate States' steamer Alabama.

"On Tuesday the 4th instant I received a letter from the Commander of that vessel, dated the 1st August at Saldanha Bay, announcing his having entered that bay with a view to effecting certain repairs, and stating that he would put to sea as soon as they were completed, and would strictly respect our neutrality.

"When this intelligence was received the United States' Consul called on me to seize her, or at any rate to send her away instantly; but as the vessel which brought the news reported that the Alabama was coming immediately to Table Bay, I replied that I could not seize her, but would take care to enforce the observance of the neutral regulations.

"On the next day, about noon, it was reported from the signal station that the Alabama was steering for Table Bay from the north, and that a Federal barque was coming in from the westward; and soon after, that the latter had been captured and put about. A little after 2 P.M. the United States' Consul called to state that he had seen the capture effected within British waters; when I told him he must make his statement in writing, and an investigation should be made. I also, by telegram, immediately requested the Naval Commander-in-chief to send a ship of war from Simon's Bay. The Alabama, leaving her prize outside, anchored in the bay at 3·30 P.M., when Captain Semmes wrote to me that he wanted supplies and repairs, as well as permission to land thirty-three prisoners. After communicating with the United States' Consul, I authorized the latter, and called upon him to state the nature and extent of his wants, that I might be enabled to judge of the time he ought to remain in port. The same afternoon he promised to send the next morning a list of the stores needed, and announced his intention of proceeding with all dispatch to Simon's Bay to effect his repairs there. The next morning (6th August) the Paymaster called on me with the merchant who was to furnish the supplies, and I granted him leave to stay till noon of the 7th.

"On the night of the 5th Her Majesty's ship Valorous had come round from Simon's Bay. During the night of the 6th the weather became unfavourable; a vessel was wrecked in the bay, and a heavy sea prevented the Alabama from receiving her supplies by the time arranged. On the morning of the 8th, Captain Forsyth, of the Valorous, and the Port Captain, by my desire, pressed on Captain Semmes the necessity for his leaving the port without any unnecessary delay; when he pleaded the continued heavy sea and the absence of his cooking apparatus, which had been sent on shore for repairs and had not been returned by the tradesman at the time appointed, and intimated his own anxiety to get away. Between 6 and 7 A.M. on Sunday the 9th he sailed, and on his way round to Simon's Bay captured another vessel, but on finding that she was in neutral waters, immediately released her.

"In the meantime the United States' Consul had, on the 5th August, addressed to me a written statement, that the Federal barque Sea Bride had been taken 'about four miles from the nearest land,' and 'already in British waters;' on which I promised immediate inquiry. The next day the Consul repeated his protest, supporting it by an affidavit of the master of the prize, which he held to show that she had been taken about two miles and a-half from the land; and the agent for the United States' underwriters, on the same day, made a similar protest. On the 7th, the Consul represented that the prize had, on the previous day, been brought within one mile and a-half of the light-house, which he considered as much a violation of the neutrality as if she had been there captured, and asked me to have the prize crew taken out, and replaced by one from the Valorous, which I declined.

"I had, during this period, been seeking for authentic information as to the real circumstances of the capture, more particularly with reference to the actual distance from the shore, and obtained through the Acting Attorney-General, statements from the keeper of the Green Point Lighthouse (this was supported by the Collector of Customs), from the signalman at the station on the Lion's Rump, and from an experienced boatman who was passing between the shore and the vessels at the time. Captain Forsyth, of the Valorous, also made inquiries of the Captain of the Alabama, and of the Port Captain, and made known the result to me. And from all these statements, I came to the conclusion that the vessels were not less than four miles distant from land; and on the 8th I communicated to the United States' Consul that the capture could not, in my opinion, be held to be illegal by reason of the place at which it was effected.

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* Appendix, vol. i. p. 312.

"In his reply of the 10th, the Consul endeavoured to show how indefensible my decision must be, if, in these days of improved artillery, I rested it on the fact of the vessels having been only three miles from land. This passage is, I think, of considerable importance, as involving an indirect admission that they were not within three miles at the time of capture. And I hope your Grace will concur in my view that it was not my duty to go beyond what I found to be the distance clearly established by past decisions under international law.

"An important question has arisen in connection with the Alabama, on which it is very desirable that I should, as soon as practicable, be made acquainted with the views of Her Majesty's Government. Captain Semmes had mentioned, after his arrival in port, that he had left outside one of his prizes previously taken, the Tuscaloosa, which he had equipped and fitted as a tender, and had ordered to meet him in Simon's Bay, as she also stood in need of supplies. When this became known to the Naval Commander-in-chief, he requested me to furnish him with a legal opinion; and whether this vessel could be held to be a ship of war before she had been formally condemned in a Prize Court; or whether she must not be held to be still a prize, and as such prohibited from entering our ports. The Acting Attorney-General, founding his opinion on Earl Russell's despatch to your Grace of the 31st January, 1862, and on Wheaton's "International Law," stated in substance that it was open to Captain Semmes to convert this vessel into a ship of war, and that she ought to be admitted into our ports on that footing.

"On the 8th August the vessel entered Simon's Bay, and the Admiral wrote that she had two small rifled guns with a crew of ten men, and that her cargo of wool was still on board. He was still doubtful of the propriety of admitting her.

"On the 10th August, after further consultation with the Acting Attorney-General, I informed Sir Baldwin Walker that, if the guns had been put on board by the Alabama, or if she had a commission of war, or if she were commanded by an officer of the Confederate Navy, there must be held to be a sufficient setting forth as a vessel of war to justify her admission into port in that character.

"The Admiral replied in the affirmative on the first and last points, and she was admitted.

"The Tuscaloosa sailed from Simon's Bay on the morning of the 14th instant, but was becalmed in the vicinity until the following day, when she sailed about noon. The Alabama left before noon on the 15th instant. Neither of these vessels was allowed to remain in port longer than was really necessary for the completion of their repairs.

"On the 16th, at noon, the Georgia, another Confederate war-steamer, arrived at Simon's Bay in need of repairs, and is still there.

"Before closing this despatch I wish particularly to request instructions on a point touched on in the letter from the United States' Consul of the 17th instant, viz., the steps which should be taken here in the event of the cargo of any vessel captured by one of the belligerents being taken out of the prize at sea, and brought into one of our ports in a British or other neutral vessel.

"Both belligerents are strictly interdicted from bringing their prizes into British ports by Earl Russell's letter to the Lords of the Admiralty of the 1st June, 1861, and I conceive that a Colonial Government would be justified in enforcing compliance with that order by any means at its command, and by the exercise of force if it should be required.

"But that letter refers only to "prizes," that is, I conceive, to the ships themselves, and makes no mention of the cargoes they may contain. Practically, the prohibition has been taken to extend to the cargoes; and I gathered, from a conversation with Captain Semmes on the subject of our neutrality regulations, that he considered himself debarred from disposing of them, and was thus driven to the destruction of all that he took. But I confess that I am unable to discover by what legal means I could prevent the introduction into our ports of captured property purchased at sea, and tendered for entry at the Custom-house in the usual form from a neutral ship. I have consulted the Acting Attorney-General on the subject, and he is not prepared to state that the Customs authorities would be justified in making a seizure under such circumstances; and therefore, as there is great probability of clandestine attempts being made to introduce cargoes of this description, I shall be glad to be favoured with the earliest practicable intimation of the views of Her Majesty's Government on the subject.

The allegation that the capture of the Sea Bride had taken place within the territorial waters of the Colony was ascertained by clear proof to be erroneous.

The questions stated in the despatch of Sir P. Wodehouse were referred to the Law Officers of the Crown, who reported on them as follows:—*

Opinion.

"My Lord, "*Lincoln's Inn, October* 19, 1863.

"We are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th September ultimo, stating that he was directed by your Lordship to transmit to us the accompanying letters and their inclosures from the Admiralty and Colonial Office, dated respectively the 26th and 29th September ultimo, relative to the proceedings at the Cape of Good Hope of the Confederate vessels of war Georgia, Alabama, and her reputed tender Tuscaloosa; and to request that we would take the various questions raised in these papers, and especially the opinion given by the Acting Attorney-General of that Colony with regard to the latter vessel, into our consideration, and favour your Lordship with such observations as we might have to make thereupon.

"We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd October instant, stating that, with reference to his letter of the 30th ultimo, he was directed by

* Appendix, vol. i, p. 322.

your Lordship to transmit to us the accompanying letter, dated the 29th September ultimo, from Mr. Adams, relative to the proceedings of the Alabama off the Cape of Good Hope, and to request that we would take the same into our consideration, together with papers on this subject then before us, and favour your Lordship with our opinion thereupon.

"In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

"That, so far as relates to the capture of the Sea Bride made by the Alabama, it appears, as we understand the evidence, to have been effected beyond the distance of three miles from the shore; and, as we have already had the honour to report to your Lordship, that distance must be accepted as the limit of territorial jurisdiction, according to the present rule of international law upon that subject. It appears, however, that this prize, very soon after her capture, was brought within the distance of two miles from the shore; and as this was contrary to Her Majesty's orders, it might have afforded just grounds (if the apology of Captain Semmes for this improper act, which he ascribed to inadvertence, had not been accepted by Sir Philip Wodehouse) for the interference of the authorities of the Cape Colony upon the principles which we are about to explain.

"Secondly, with respect to the Alabama herself, we are clearly of opinion that neither the Governor nor any other authority at the Cape could exercise any jurisdiction over her; and that, whatever was her previous history, they were bound to treat her as a ship of war belonging to a belligerent Power.

"Upon the third point raised with regard to the vessel called the Tuscaloosa, we are not able to agree with the opinion expressed by the Attorney-General of the Cape Colony, that she had ceased to have the character of a prize captured by the Alabama merely because she was, at the time of her being brought within British waters, armed with two small guns, in charge of an officer, and manned with a crew of ten men from the Alabama, and used as a tender to that vessel, under the authority of Captain Semmes.

"It would appear that the Tuscaloosa is a barque of 500 tons, captured by the Alabama off the coast of Brazil on the 21st of June last, and brought into Simon's Bay on or before the 7th of August, with her original cargo of wool (itself, as well as the vessel, prize) still on board, and with nothing to give her a warlike character (so far as appears from the papers before us), except the circumstances already noticed.

"We therefore do not feel called upon, in the circumstances of this case, to enter into the question whether, in the case of a vessel duly commissioned as a ship of war, after being made prize by a belligerent Government, without being first brought *infra præsidia* or condemned by a Court of Prize, the character of prize, within the meaning of Her Majesty's orders, would or would not be merged in that of a national ship of war. It is enough to say that the citation from Mr. Wheaton's book by the Colonial Attorney-General does not appear to us to have any direct bearing upon this question.

"Connected with this subject is the question as to the cargoes of captured vessels, which is noticed at the end of Sir Philip Wodehouse's despatch of the 19th August last. We think that, according to the true interpretation of Her Majesty's Orders, they apply as much to prize cargoes of every kind which may be brought by any armed ships or privateers of either belligerent into British waters as to the captured vessels themselves. They do not, however, apply to any articles which may have formed part of any such cargoes, if brought within British jurisdiction, not by armed ships or privateers of either belligerent, but by other persons who may have acquired or may claim property in them by reason of any dealings with the captors.

"We think it right to observe that the third reason alleged by the Colonial Attorney-General for his opinion assumes (though the fact had not been made the subject of any inquiry) that 'no means existed for determining whether the ship had or had not been judicially condemned in a Court of competent jurisdiction;' and the proposition that, '*admitting her to have been captured by a ship of war of the Confederate States*, she was entitled to refer Her Majesty's Government, in case of dispute, to the Court of her States, in order to satisfy it as to her real character,' appears to us to be at variance with Her Majesty's undoubted right to determine, within her own territory, whether her orders, made in vindication of her own neutrality, have been violated or not.

"The question remains, what course ought to have been taken by the authorities at the Cape, first, in order to ascertain whether this vessel was, as alleged by the United States' Consul, an uncondemned prize, brought within British waters in violation of Her Majesty's neutrality; and secondly, what ought to have been done if such had appeared to be really the fact? We think that the allegations of the United States' Consul ought to have been brought to the knowledge of Captain Semmes, while the Tuscaloosa was still within British waters; and that he should have been requested to state whether he did or did not admit the facts to be as alleged. He should also have been called upon (unless the facts were admitted) to produce the Tuscaloosa's papers. If the result of these inquiries had been to prove that the vessel was really an uncondemned prize, brought into British waters in violation of Her Majesty's Orders, made for the purpose of maintaining her neutrality, it would, we think, deserve very serious consideration whether the mode of proceeding in such circumstances, most consistent with Her Majesty's dignity and most proper for the vindication of her territorial rights, would not have been to prohibit the exercise of any further control over the Tuscaloosa by the captors; and to retain that vessel under Her Majesty's control and jurisdiction until properly reclaimed by her original owners.

(Signed) "ROUNDELL PALMER.
"R. P. COLLIER.
"ROBERT PHILLIMORE."

Instructions in accordance with this opinion were accordingly sent to Sir P. Wodehouse.*

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* Appendix, vol. i, p. 327.

In connection with the above correspondence it may be convenient to state here the subsequent history of the Tuscaloosa.

The question which arose as to this ship was not whether there had been a violation of the law of nations or of Her Majesty's neutrality, but whether the orders issued by Her Majesty's Government, that no prizes should be suffered to be brought into ports within Her Majesty's dominions, had or had not been infringed. This again depended on the question whether the Tuscaloosa had or had not been divested of the character of a prize. The Governor of the Cape Colony was advised that she had, and he accordingly permitted her to depart. Her Majesty's Government was advised that she had not. She returned to Simon's Bay on the 26th December, 1863, and was then seized by the Rear-Admiral commanding on the station, with the concurrence of the Governor.* Directions were subsequently sent by Her Majesty's Government that she should be restored to her Commander, Lieutenant Low, on the special ground that, having been once allowed to enter and leave the port, he was fairly entitled to assume that he might do so a second time.† She was not, however, actually given up; Lieutenant Low having left the Cape at the time, and there being no one to receive her. At the conclusion of the war, she was handed over to the Consul of the United States as the representative of her original owners.‡

A further question afterwards arose respecting certain goods which had been imported by a French ship into the Mauritius, and had been claimed by the United States' Consul there, on the ground that they had formed part of the cargo captured by the Alabama in the Sea Bride. This question having been referred to the Law Officers of the Crown, they reported on it as follows:—§

The Law Officers of the Crown to Earl Russell.

"My Lord, "*Lincoln's Inn, May* 11, 1864.

"We are honoured with your Lordship's commands signified in Mr. Murray's letter of the 5th instant, stating that he was directed by your Lordship to transmit to us the papers as marked in the margin, respecting some goods which had been brought to the Mauritius in the French barque Sirène, and for the detention of which application was made by the United States' Consul to the Governor of the Colony, on the ground that they had formed part of the cargo of the Confederate prize Sea Bride; and Mr. Murray stated that we should observe from the letter from the Colonial Office of the 5th instant, that Mr. Secretary Cardwell is of opinion that, as the question of the general instructions to be issued to the Governors of Her Majesty's Colonies was brought under our consideration in Mr. Layard's letter of the 16th ultimo, it is desirable that we should also have before us the papers now sent to us, relative to the disposal of the cargoes of prize vessels brought into a colonial port in British or other neutral vessels; and Mr. Murray was accordingly to request that we would take these papers into consideration, together with those lately before us, and embody in the proposed instructions to the Colonial Governors such directions as we may consider advisable on this particular head.

"In obedience to your Lordship's commands, we have taken these papers into consideration, and have the honour to report that, after considering these papers, it does not appear to us to be necessary to make any change in, or addition to, the draft instructions prepared by us, pursuant to the request conveyed in Mr. Layard's letter of the 16th ultimo.

"Questions such as that lately raised at the Mauritius by the United States' Consul with respect to the cargo of the Sea Bride, must be left, in our opinion, to the civil tribunals. The Executive Government has no authority to disregard or call in question the *primâ facie* title, evidenced by possession, of a private non-belligerent person who brings property of this description into a neutral port, whether he be a foreigner or a British subject. And there is no foundation in law for the idea that a valid title cannot be made to property taken in war, by enemy from enemy, without a prior sentence of condemnation.

"The absence of such a sentence may be material when the question is whether captured goods, brought by a belligerent ship of war, exempt from civil jurisdiction, into a neutral port from which prizes are excluded, ought to be regarded by the neutral Government as still having the character of prize; but this is altogether different from a mere question of property in the goods themselves.

"We have, &c.

(Signed) "ROUNDELL PALMER.
"R. P. COLLIER.
"ROBERT PHILLIMORE."

It has been previously stated that the Alabama sailed from Simon's Bay on the 15th August. On the 16th September she returned thither,‖ and soon afterwards sailed for the Indian seas. The United States war-steamer Vanderbilt had in the interval visited both Cape Town and Simon's Bay, coaled, and departed for the Mauritius. She had previously coaled at St. Helena, and at the Mauritius she obtained a renewed supply. The

* Appendix, vol. i, pp. 330–342. † Ibid., pp. 342–344. ‡ Ibid., p. 363.
§ Ibid., p. 356. ‖ Ibid., p. 325.

Alabama touched and coaled at Singapore on or about the 21st of December, 1863 returned a second time to the Cape of Good Hope on the 20th of March, 1864;* and thence proceeded to Europe, anchoring, on the 11th June, 1864, in the port of Cherbourg. The United States' Minister at Paris, Mr. Dayton, protested in writing against her being received into a French port.† She was, however, admitted, and suffered to coal and to make such repairs as might be necessary, but did not obtain permission to enter the Government docks.

On the 19th June, 1864, she engaged the United States' war-steamer Kearsarge, off the coast of France, and was sunk, after an action lasting about an hour. Some of her officers and crew were picked up and saved by an English yacht, which happened to be near at hand, and some by a French pilot-boat.

With reference to this incident some correspondence passed between Mr. Adams and the Government of Her Britannic Majesty, Mr. Adams erroneously contending that it was the duty of the owner of the yacht to surrender the persons whom he had picked up to the Captain of the Kearsarge. To the representations made on this subject Earl Russell replied:—‡

Earl Russell to Mr. Adams.

"Sir, "*Foreign Office, June* 27, 1864.

"I have the honour to acknowledge the receipt of your note of the 25th instant, complaining of the interference of a British vessel, the Deerhound, with a view to aid in effecting the escape of a number of persons belonging to the Alabama, who you state had already surrendered themselves prisoners of war, and calling my attention to the remarkable proportion of officers and American insurgents, as compared with the whole number of persons rescued from the waves. You state, further, that you can scarcely entertain a doubt that this selection was made by British subjects with a view to connive at the escape of these particular individuals from captivity.

"I have the honour to state to you, in reply, that it appears to me that the owner of the Deerhound, of the Royal Yacht Squadron, performed only a common duty of humanity in saving from the waves the Captain and several of the crew of the Alabama. They would otherwise, in all probability, have been drowned, and thus would never have been in the situation of prisoners of war.

"It does not appear to me to be any part of the duty of a neutral to assist in making prisoners of war for one of the belligerents.

"I shall, however, transmit to the owner of the Deerhound a copy of your letter and its inclosures, together with a copy of this letter.

"I am, &c.
(Signed) "RUSSELL."

The following correspondence also passed between the Captain of the Kearsarge and M. Bonfils, who is stated to have been an agent, in France, of the Government of the Confederate States:—§

Captain Winslow, U.S.N., to M. Bonfils.

"Monsieur, "*United States steam-ship Kearsarge, le* 21 *Juin,* 1864.

"Certains canots de pilots, auxquels j'avais permis, par humanité, de sauver plusieurs prisonniers lorsque l'Alabama eût sombré, les ont amenés à Cherbourg. Ces officiers et hommes d'équipage n'en sont pas moins soumis aux obligations que la loi de la guerre impose; ils sont mes prisonniers, et je demande qu'ils se rendent à bord du Kearsarge pour s'y constituer prisonniers. Dans le cas qu'ils chercheraient à se délier de cette obligation à la faveur des moyens qui ont été employés, dans des cas semblables qui pourraient se présenter ils ne doivent plus attendre aucune clémence.

(Signé) "JNO. A. WINSLOW."

M. Bonfils to Captain Winslow, U.S.N.

"Monsieur,

"J'ai reçu votre lettre du 21 Juin. L'objet de votre réclamation est un de ceux sur lesquels je n'exerce aucun contrôle, et je vous ferai remarquer que votre demande aurait du être adressée au Gouvernement Français, chez lequel ces malheureux ont trouvé refuge.

"Je ne connais aucune loi de la guerre qui empêche un soldat de s'échapper d'un champ de bataille après un revers, lors même qu'il aurait été déjà fait prisonnier, et je ne vois pas pourquoi un marin n'en pourrait pas faire autant à la nage. Je dois refuser d'agir comme votre intermédiaire auprès de certaines personnes que vous ne nommez même pas, et que néanmoins vous réclamez comme étant vos prisonniers.

"Je ne puis non plus comprendre comment les autorités des Etats Unis peuvent prétendre retenir des prisonniers dans les limites de l'Empire Français.

"Je suis, &c.
(Signé) "BONFILS."

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* Appendix. vol. i, p. 372. † Ibid., p. 376. ‡ Ibid., p. 380. § Ibid., 390.

After the original departure of the Alabama from Liverpool, many communications were from time to time addressed by Mr. Adams to Her Majesty's Government, in which he dwelt on the circumstances that the vessel was built in England, and subsequently received her armament from England; that coal and supplies had also been procured for her from England; that many of her crew were British subjects, and that their wages were paid to their wives and families in England, through merchants resident at Liverpool. These circumstances were repeatedly referred to by Mr. Adams; and, in a letter inclosed by him to Earl Russell, dated the 11th January, 1864,* and written by Mr. Dudley, they were enumerated as proving that the Alabama ought to be deemed a British ship, and her acts piratical. The Law Officers of the Crown were requested to advise the Government whether any proceedings could be taken with reference to the supposed breaches of neutrality alleged by Mr. Adams and Mr. Dudley, and they reported as follows:—†

Opinion of Law Officers.

"We are of opinion that no proceedings can at present be taken with reference to any of the matters alleged as breaches of neutrality in the accompanying printed papers.

"If the persons alleged to be Englishmen or Irishmen who have been serving on board the Alabama are natural-born British subjects, they are undoubtedly offenders against the Foreign Enlistment Act. But, not being (so far as it appears) within British jurisdiction, no proceedings can now be taken against them; and it is, under these circumstances, unnecessary to enter into the question of the sufficiency or insufficiency, in other respects, of the evidence against them contained in John Latham's affidavit of the 8th January last. Whether any acts were done within the United Kingdom, to induce all or any of these persons to enlist in the Confederate Service, or to go abroad for that purpose, which would be punishable under the Foreign Enlistment Act, is a question on which these papers throw little or no light; certainly, they furnish no evidence of any such acts against any persons or person now within British jurisdiction, on which any proceedings could possibly be taken under that Statute.

"So far as relates to the supply of coals or other provisions or stores to the Alabama, and the payments made to relatives of seamen or others serving on board that ship by persons resident in the country, we are not aware of any law by which such acts are prohibited, and therefore no proceedings can be taken against any person on that account.

"So far as relates to Mr. Dudley's argument (not now for the first time advanced) that the Alabama is an English piratical craft, it might have been enough to say that Mr. Dudley, while he enumerates almost everything which is immaterial, omits everything that is material, to constitute that character. The character of an English pirate cannot possibly belong to a vessel armed and commissioned as a public ship of war by the Confederate States, and commanded by an officer belonging to the navy of those States, under their authority. Such the Alabama undoubtedly is, and has been, ever since she first hoisted the Confederate flag, and received her armament at Terceira. Even by the schedule to John Latham's affidavit, in which he describes the greater part of her petty officers and seamen (on what evidence we know not) as Englishmen or Irishmen, it appears that twenty out of the twenty-five superior officers (as well as the Captain) are not so described; and of these twenty officers one is stated to be the brother-in-law of the President of the Confederate States. It is to be regretted that, in any of the discussions on this subject, so manifest an abuse of language as the application of the term 'English piratical craft' to the Alabama should still be permitted to continue.

(Signed) "ROUNDELL PALMER.
"R. P. COLLIER."

Summary.

The Alabama was built at Birkenhead by a ship-building firm which had for a long time carried on a very extensive business. The building of ships of war required for the use of foreign Governments, and ordered by such Governments directly or through agents, had formed a part of the ordinary business of the firm. It has been alleged that one of the members of the firm was a Member of the House of Commons. This allegation, if it were true, would be immaterial; but Her Majesty's Government has been informed and believes that it was not true, and that Mr. John Laird, who was Member of Parliament for Birkenhead, and had formerly been a partner in the business, had ceased to be so before the building of the Alabama. The vessel appears to have been completed by the builders for delivery in the port of Liverpool, and to have been delivered accordingly; and Her Majesty's Government sees no reason to doubt that the building and delivery of the vessel were, so far as the builders were concerned, transactions in the ordinary course

* Appendix, vol. i, p. 226.

† Ibid., p. 235.

of their business, though they probably knew, and did not disclose, the employment for which she was intended by the person or persons to whose order she had been built.

The general construction of the vessel was such as to make it apparent that she was intended for war and not for commerce.

The attention of Mr. Dudley had been called to this vessel in November 1861 by his predecessor in office. The attention of Her Britannic Majesty's Government was for the first time directed to her by Mr. Adams, in a Note received on the 24th June, 1862.

Mr. Adams's communication was referred immediately to the Law Officers of the Crown. Inquiries were directed to be forthwith instituted at Liverpool, and such inquiries were instituted and prosecuted accordingly. Mr. Adams was at the same time requested to instruct the United States' Consul at Liverpool to submit such evidence as he might possess, tending to show that his suspicions as to the destination of the vessel were well-founded, to the Collector of Customs at that port.

In order to enable Her Majesty's Government to justify and support a seizure of the vessel, it was necessary that the Government should have reasonable evidence, not only that she had been or was being equipped, armed, or fitted out for war, but also that she was so equipped, armed, or fitted out with the intention that she should be used to cruize or commit hostilities against the United States.

Admissible and material evidence, tending to prove the existence of such an unlawful intention, was for the first time obtained by the Customs Officers at Liverpool on the 21st July, 1862, and came into the possession of Her Majesty's Government on the following day. This evidence, however, though admissible and material, was very scanty, consisting in reality of the testimony of one witness, who stated facts within his own knowledge, that of the other deponents being wholly or chiefly hearsay. Further testimony was obtained on the 23rd July, and additional evidence on the 25th July.

It was the right and duty of Her Majesty's Government to inform its judgment as to the credibility and sufficiency of the evidence obtained as aforesaid, by consulting its official Legal Advisers. Nor can any reasonable time taken by the Advisers of the Government for deliberation, especially when additional materials were being daily received and sent to them, be a ground for imputing want of due diligence to Her Majesty's Government. One of Her Majesty's ordinary Legal Advisers, the Queen's Advocate, now deceased, was at that time seriously ill of a malady from which he never recovered, and this was mentioned at the time (on the 31st July, 1862), by Lord Russell to Mr. Adams, as a circumstance which had occasioned some delay.*

All the evidence obtained as aforesaid was in fact referred by the Government as soon as obtained, with the utmost expedition, to its Legal Advisers.

The Advisers of the Government, on the 29th July, reported their opinion that the evidence was sufficient to justify a seizure of the vessel.

On the day on which this opinion was given, and before it could be reported to the Government, the Alabama put to sea. She had not been registered, and the application for a clearance, which is usual in the case of ships leaving port, had not been made, and the intention to carry her to sea was concealed by means of an artifice.

The destination of the vessel, and the course which she would take after putting to sea, were entirely unknown, except to the persons immediately concerned in despatching her. Orders for arresting her were, however, sent by the Government to various places at which she might probably touch after leaving Liverpool, and to Nassau.

The Alabama sailed from England wholly unarmed, and with a crew hired to work the ship and not enlisted for the Confederate service. She received her armament at a distance of more than a thousand miles from England, and was armed for war, not within the dominions of Her Majesty, but either in Portuguese waters or on the high seas.

The guns and ammunition which were put on board of the Alabama off Terceira had been procured and exported from England in an ordinary merchant-steamer, which loaded them as cargo and sailed with a regular clearance for Nassau.

The Alabama was commissioned by the Government of the Confederate States, and commanded and officered by American citizens. Of the crew a considerable number were British subjects, who were induced by persuasion and promises of reward to take service in her whilst she was off Terceira. Others were American citizens, and the proportion which these bore to the rest increased during her cruize.

After having been armed and commissioned as a ship-of-war of the Confederate States, the Alabama was admitted in that character into ports of all the countries visited by her, amongst which were several of the Colonies of Great Britain. In these she was received on the same footing as elsewhere, without favour or partiality.

No serious endeavour to capture the Alabama appears to have been made on the part

* Appendix, vol. i, p. 249.

of the Government of the United States. The Tuscarora, which had been summoned by Mr. Adams to an English port in order to intercept her on her departure, failed to do so, apparently through the remissness of the Tuscarora's Commander. During the whole cruize, which lasted nearly two years, and until she sailed from the port of Cherbourg to engage the Kearsarge, she was only encountered twice by United States' ships; once in the Gulf of Mexico, when she voluntarily provoked an action and sunk her opponent, and a second time when she eluded the pursuit of the San Jacinto, at Martinique.

Her Britannic Majesty's Government cannot admit that, in respect of the Alabama, is is justly chargeable with any failure of international duty, for which reparation is due from Great Britain to the United States.

PART VII.

Statement of Facts relative to the Georgia.

On the 8th April, 1863, Mr. Adams addressed to Earl Russell a Note respecting a steam-vessel, built at Dumbarton, in Scotland, and at first known as the "Japan," but subsequently as the "Georgia."

This vessel had put to sea six days before the date of Mr. Adams' Note, and was at that date out of the Queen's dominions. No information whatever relating to her had previously reached Her Majesty's Government. Mr. Adams' Note was as follows:—*

Mr. Adams to Earl Russell.

"My Lord, "*Legation of the United States, London, April* 8, 1863.

"From information received at this Legation, which appears entitled to credit, I am compelled to the painful conclusion that a steam-vessel has just departed from the Clyde with the intent to depredate on the commerce of the people of the United States. She passed there under the name of the Japan, but is since believed to have assumed the name of the Virginia. Her immediate destination is the Island of Alderney, where it is supposed she may yet be at this moment. A small steamer called the Alar, belonging to Newhaven, and commanded by Henry P. Maples, has been loaded with a large supply of guns, shells, shot, powder, &c., intended for the equipment of the Virginia, and is either on the way or has arrived there. It is further alleged that a considerable number of British subjects have been enlisted at Liverpool, and sent to serve on board this cruizer.

"Should it be yet in the power of Her Majesty's Government to institute some inquiry into the nature of these proceedings, in season to establisl their character, if innocent, or to put a stop to them, if criminal, I feel sure that it would be removing a heavy burden of anxiety from the minds of my countrymen in the United States.

"I pray, &c.
(Signed) "CHARLES FRANCIS ADAMS."

From despatches addressed by Mr. Adams and Mr. Dudley to their own Government, it appears that the Consuls of the United States at Glasgow and Liverpool, and Mr. Adams himself, had for a long time been in possession of information respecting this vessel, and that she had long been an object of suspicion to them. Mr. Adams, on the 9th April, 1863, wrote as follows to Mr. Seward:—

"Lastly, comes the case of the Japan, *alias* the Virginia. I have been long in the possession of information about the construction and outfit of that vessel on the Clyde, but nothing has ever been furnished to me of a nature to base proceedings upon. Learning, however, that she had gone to the Island of Alderney to take her armament there, I made up my mind to send notice of it to the British Government, and leave it to them to act in the case as they might think fit."

Mr. Dudley, on the 3rd April, had written as follows to Mr. Seward:—

"Mr. Underwood, our Consul at Glasgow, has no doubt informed you about the steamer now called the Japan, formerly the Virginia, which is about to clear from this port for the East Indies. Some seventy or eighty men, twice the number that would be required for any legitimate voyage, were shipped at Liverpool for this vessel, and sent to Greenock on Monday evening last. They are shipped for a voyage of three years. My belief is, that she belongs to the Confederates, and is to be converted into a privateer; quite likely to cruize in the East Indies, as Mr. Young, the Paymaster from the Alabama, tells me it has always been a favourite idea of Mr. Mallory, the Secretary of the Confederate Navy, to send a privateer in these waters. I sent a man from here to Glasgow to accompany these men, to endeavour to find out the destination of the vessel, &c. He has not been successful yet in his efforts. He has been on board, and writes that she has no armament, and he is still there watching her."

No communication respecting this vessel was made to Her Majesty's Government until the 8th April, six days after her departure from British waters.

The receipt of Mr. Adams' Note of the 8th April was unofficially acknowledged by Mr. Hammond, one of the Under-Secretaries of State for Foreign Affairs, as follows:—*

Mr. Hammond to Mr. Adams.

"(Private.)

"My dear Sir, "*Foreign Office, April* 8, 1863.

"I found your immediate letter on my arrival at the office at 12·45, and as your mail goes, I believe, to-day, you may like to know at once that within half an hour of that time it was sent to the

* Appendix, vol. i, p. 399.

Home Office, within whose particular jurisdiction are the Channel Islands. A copy will also be sent to the Treasury, as soon as it can be made.

"You shall have an official acknowledgment of your letter as soon as I can get Lord Russell's signature; but he is out of town.

"Very faithfully, &c.
(Signed) "E. HAMMOND."

Copies of Mr. Adams' Note were, on the same day, sent to the Home Office and the Treasury, and those Departments were requested to adopt, without delay, the measures most suitable for ascertaining the correctness of the report, and, if it should prove to be well founded, then to take the most effectual measures allowed by law for defeating the alleged attempt to fit out a belligerent vessel from a British port, and for bringing to justice all persons connected with the vessel who might have rendered themselves amenable to the law.

In pursuance of this request, the following letter was addressed by the Under-Secretary of State for the Home Department to the Lieutenant-Governor of Guernsey:—*

Mr. Waddington to Major-General Slade.

"Sir, "*Whitehall, April* 8, 1863.

"I am directed by Sir George Grey to transmit to you herewith, as received through the Foreign Office, a copy of a letter from the United States' Minister at this Court, respecting a steam-vessel named either the Japan or the Virginia, reported to have left the Clyde for Alderney, where she is to receive on board an armament conveyed to that island by a small steamer, the Alar, belonging to Newhaven, and is to be eventually employed in hostilities against the United States; and I am to request that you will make immediate inquiry into the truth of the allegations contained in that communication.

"I have to call your attention tot he Statute 59 Geo. III, cap. 69. Section 7, appears to be applicable to this case, if the information which has been given to the Minister of the United States of America should turn out to be correct. In that case the Law Officers of the Crown should be instructed to take, without delay, the proper proceedings authorized by the law of Alderney, to enforce the provisions of the Act in question, and the Officers of Customs may be called upon to assist, if necessary.

"Sir George Grey will be glad to be informed of the result of the inquiry, and of any steps that may be taken in consequence.

"I have, &c.
(Signed) "H. WADDINGTON."

The Lieutenant-Governor, on receiving these instructions, desired Captain de Saumarez, commanding Her Majesty's ship Dasher, to proceed at once to Alderney. It was found, however, that Mr. Adams' information as to the immediate destination of the two vessels mentioned in his Note was erroneous.

The Commissioners of Customs were, on the same day (8th April) directed by the Lords Commissioners of the Treasury to instruct their officers at Alderney to co-operate with the Lieutenant-Governor of Guernsey. This order was forthwith executed, and the Commissioners wrote to the same effect to their officers at Guernsey. They likewise instructed the Collectors of Customs at Greenock and Glasgow to report all the information which they might be able to obtain respecting the Japan.

The Collector at Greenock reported as follows:—†

Mr. Hodder to Commissioner of Customs.

"Honourable Sir, "*Custom-House, Greenock, April* 10, 1863.

"With reference to the Board's commands signified by Mr. Gardner's letter of yesterday's date, directing me to report to the Board all the particulars I may be enabled to ascertain respecting a vessel called the Japan or Virginia, which it is alleged has recently sailed from the Clyde, to be employed against ships of the United States, I beg to report an iron vessel named the Japan, Thomas Hitchcock, master, registered at Liverpool as 427 tons, official No. 45868, was built at Dumbarton, and measured by the measuring officer at Glasgow, came down the river and proceeded to Gareloch Head, to adjust her compasses, and afterwards brought up at the Tail of the Bank, where she remained three or four days. This vessel was, on the 31st ultimo, entered outwards by Colin S. Caird, for Point de Galle and Hong Kong, with a crew of forty-eight men. On the 1st instant she shipped the under-mentioned bonded stores, which were sent from Liverpool, viz.: 115 gallons of spirits, 32 gallons of wine, 244 lbs. of tea, 590 lbs. of coffee, 212 lbs. of tobacco, 10 lbs. cigars, 18 cwt. 3 qrs. 2 lbs. of sugar, 2 cwt. 2 qrs. 8 lbs. of molasses, 2 cwt. 1 qr. 5 lbs. of raisins, and 1 cwt. 1 qr. 8 lbs. of currants; and cleared the same day in ballast for Point de Galle and Hong Kong.

"It appears she left the anchorage at the Tail of the Bank early on the morning of the 2nd instant, with the ostensible purpose of trying her engines, intending to return, having on board several joiners who were fitting up her cabins; and I am informed that after she left this the joiners were employed in

* Appendix, vol. i, p. 401. † Ibid., p. 403.

fitting up a magazine on board, and were subsequently landed on some part of the coast lower down the Clyde.

"It is reported that she did not take her final departure until the 6th or 7th instant; but I cannot ascertain where she went after leaving this anchorage.

"I have questioned the officer who performs Tide Surveyor's duty afloat, and who visited her on the evening of the 1st instant, to see that the stores were correct. He informs me he saw nothing on board which could lead him to suspect that she was intended for war purposes. I can testify that she was not heavily sparred; indeed she could not spread more canvas than an ordinary merchant-steamer. I beg to add, when the Tide Surveyor was on board, the joiners were fitting doors to the cabins.

"I am, &c.
(Signed) "J. F. MOORE HODDER, *Collector.*"

The officer acting for the Collector at Glasgow transmitted the subjoined Report made by the Measuring Surveyor at that port.* He added that the Japan had not cleared from Glasgow:—

"Sir, "*Custom-House, Glasgow, April* 10, 1863.

"In compliance with your reference, I beg to report that an iron screw-steamer, called the Japan, was recently built by Messrs. W. Denny, Brothers, at Dumbarton.

"I surveyed her on the 17th January last, and visited on two subsequent occasions for the purpose of completing my survey. She appeared to me to be intended for commercial purposes, her framework and plating being of the ordinary sizes for vessels of her class.

"I annex a copy of my certificate of survey, which shows the vessel's tonnage and description, and beg to add that the formulæ and certificate of survey for the Japan were forwarded to Liverpool on the 2nd ultimo, with a view to her being registered as a British ship.

"Respectfully submitted,
(Signed) "M. COSTELLO, *Measuring Surveyor.*"

"FORM NO. 1 A.
Steamer. "CERTIFICATE of Survey.†

Name of Ship.	British or Foreign Built.	Port of intended Registry.	How Propelled.
"Japan"	British	Liverpool	By a screw propeller.

Number of Decks	One and a Poop.	Build	Clincher.
Number of Masts	Two.	Galleries	None.
Rigged	Brig.	Head	Demi-Woman.
Stern	Round.	Framework	Iron.

MEASUREMENTS.	Feet.	Tenths.
Length from the fore part of Stem under the Bowsprit to the aft side of the head of the stern post ..	219	..
Main breadth to outside plank	27	25
Depth in hold from Tonnage Deck to Ceiling at Midships	14	75
Name and Address of Builder—W. Dennys, Brothers, Dumbarton.		

TONNAGE.	No. of Tons.
Tonnage under Tonnage Deck	554·54
Closed-in Spaces above the Tonnage Deck, if any; viz.:	
Space or Spaces between Decks	..
Poop	85·67
Round-house	..
Other inclosed Spaces, if any, naming them—Store-room on Deck.	1·39
Excess of Space, appropriated to the Crew above $\frac{1}{35}$th of the remaining Tonnage	6·68
Total	648·28
Deduction for Space required for Propelling Power as measured ..	221·03

Length of Engine Room	54 feet 3 tenths.	Register Tonnage (after making Deduction for Space for Propelling Power in Steamers	427·25
Number of Engines	2		
Combined Power (estimated Horse-power) Number of Horses-power ..	200 Horses.		
Name and Address of Engine Makers—Denny and Co., Dumbarton.			

"I, the undersigned Martin Costello, Measuring Surveyor for this port, having surveyed th above-named ship, hereby certify that the above particulars are true, and that the name and the Port c Registry are properly painted on a conspicuous part of her stern in manner directed by the Merchan Shipping Act, 1854.

"Dated at Glasgow, the 4th day of February, 1863.

(Signed) "M. COSTELLO, *Surveyor.*"

It appears from these Reports that the vessel, when surveyed by the Measuring Surveyor, presented nothing calculated to excite suspicion; that she had the appearance o being intended for commercial purposes, her framework and plating being such as are

* Appendix, vol. i, p. 404. † Ibid., p. 423.

ordinary in trading-vessels of her class; that she had been regularly entered outwards for Point de Galle and Hong Kong, with a crew of forty-eight men, and that, on the 1st April, 1863, she had cleared for that destination in ballast.

It subsequently appeared further that she had, on the 20th of March, 1863, been registered as the property of a Mr. Thomas Bold, a merchant residing at Liverpool, on the declaration of Bold that he was the sole owner of her. It also appeared that she had been advertised at the Sailors' Home in Liverpool as about to sail for Singapore; that seamen were hired for her at Liverpool as for a ship bound to that port; and that all her crew so hired signed articles for a voyage to Singapore, or any intermediate port for a period of two years, and that the men believed that this was the real destination of the ship. She took her crew on board whilst lying in the Clyde, off the port of Greenock, and on the 2nd of April she sailed.

With respect to the Alar, the small steamer stated by Mr. Adams in his Note of the 8th to have conveyed men and munitions of war to the Japan, the Commissioners of Customs had, before the date of that note, received from their Collector at Newhaven the following Report, which they had forwarded to the Treasury:—*

Mr. Dolan to the Commissioners of Customs.

"Honourable Sirs, "*Custom-House, Newhaven, April* 6, 1863.

"The steam-ship Alar, of London, 85 tons, owned by H. P. Maples, sailed on Sunday morning, 5th instant, at 2 A.M., bound according to the ship's papers, viz., the accompanying content, for Alderney and St. Malo. On Saturday, at midnight, thirty men, twenty of whom appeared to be British sailors, ten mechanics, arrived by train. Three gentlemen accompanied them, Mr. Lewis, of Alderney; Mr. Ward, and Mr. Jones. The men appeared to be ignorant of their precise destination; some said they were to get 20*l.* each for the trip. A man, rather lame, superintended them. Shortly after midnight, a man arrived from Brighton on horseback, with a telegram, which, for purposes of secresy, had been sent there and not to Newhaven, it is suspected. Mr. Staniforth, the agent, replied to my inquiries this morning that the Alar had munitions of war on board, and that they were consigned by † to a Mr. Lewis, of Alderney. His answers were brief, and with reserve, leaving no doubt on my mind nor on the minds of any here that the thirty men and munitions of war are destined for transfer at sea to some second Alabama. The private telegram to Brighton intimated, very probably, having been reserved for the last hour, where that vessel would be found. Whether the shipment of the men, who all appeared to be British subjects, can, if it should be hereafter proved that they have been transferred to a Federal or Confederate vessel, be held as an infringement of the Foreign Enlistment Act, and whether the clearance of the Alar, if hereafter proved to be untrue, can render the master amenable under the Customs Consolidation Act, is for your consideration respectfully submitted.

(Signed) "R. J. DOLAN, *Collector.*"

"No. 7. "*Content.*

"Port of Newhaven. Pilot

Ship's Name and Destination.	Tonnage and Number of Guns.		If British, Port of Registry; if Foreign, the Country.	Number of Crew.	Name of Master.	Number of Passengers or Troops.
	Tons.	Guns.				
"Alar," Alderney and St. Malo.	85	..	British ship, London ..	16	Jos. Back. ..	..

Warehoused and Transhipment Goods.				Drawback and Restricted Goods.			
Marks.	Numbers.	Number and Description of Packages.	Remarks.	Marks.	Numbers.	Number and Description of Packages.	Remarks.

British Goods and Foreign Goods free of Duty, and Foreign Goods not for Drawback:—
Sundry Free Goods.

"G. W. STANIFORTH, *Broker.*
"Cleared } April 4th.
"Dated }

"Examined

(Signed) "W. S. FLINT, *Examining Officer.*

"I do declare, That the above Content is a true account of all goods shipped or intended to be shipped on board the above-named ship, and correct in all other particulars, and that all the requirements of the Act 17 & 18 Vict., cap. 104, have been duly complied with.

(Signed) "JOS. BACK, *Master.*

"Signed and declared, this 4th day of April,
"before me, (Signed) "W. K. STAVELEY, *Collector.*"

* Appendix, vol. i, p. 405.

† Blank in the original.

When this Report was received no information respecting the vessel then known as the Japan had reached the Commissioners of Customs or the Government, and on this point no information was or could be conveyed in the Report, since none was possessed by the Collector at Newhaven.

On the 11th April, 1863, the following statement appeared in the second edition of the "Times" newspaper:—*

"*Plymouth, Saturday Morning.*

"The steam-ship Alar, Captain Back, of and from Newhaven, for St. Malo, put in here this morning and landed seventeen men belonging to the steam-ship Japan, Captain Jones, 600 tons, which left Greenock on the 28th March for a trading voyage in the Chinese seas. On arrival off the coast of France she lay-to for three days, it is supposed to take in more cargo. On the 4th April, at 11 A.M., one of the condensers of the steam-engines, which are about 200 horse-power, exploded, and two firemen in the stokehole were scalded, viz., Alexander McDuff, of Edinburgh, and William Hamilton, of Downpatrick, seriously; they were taken immediately into the Captain's cabin, transferred to the Alar on the 9th, and are now in the Devon and Cornwall Hospital here. The other fifteen are seamen and firemen, who took advantage of the proximity of the Alar, and are said to have 'backed out of the voyage to China.' They left by train this morning for Liverpool, Portsmouth, &c. The Japan, which had a complement of eighty men, has proceeded. The Alar had to lay-to in the Channel on Thursday and Friday, in consequence of some trifling damages."

Earl Russell, on observing this statement, gave orders that it should be immediately brought to the notice of the Secretary of State for the Home Department and the Lords Commissioners of the Treasury. Afterwards, and on the same day, at 5 P.M., he received from Mr. Adams the following Note referring to it:—†

Mr. Adams to Earl Russell.

"My Lord, "*Legation of the United States, London, April* 11, 1863.

"I have the honour to inclose to your Lordship a slip extracted from the London 'Times' of this day touching the case of the vessel now called the Japan, but named at Greenock lately the Virginia. It is needless to add that the statement therein made of the destination of the vessel is known to me to be false. I have reason to believe that she has not gone. The steamer Alar has already transferred to her one 56-pounder gun and four smaller ones, and is expected to return to her.

"I pray, &c.

(Signed) "CHARLES FRANCIS ADAMS."

Copies of this Note were immediately sent to the Home Department and the Treasury, with a request that it should receive immediate attention, and that those Departments would take such steps as might be legally in their power to prevent a violation of the law.

On the same evening, at 7·40 P.M., orders were sent by telegraph to the Collector of Customs at Plymouth to make inquiry about the Alar; and, at 11·40 P.M., an answer was received from him to the effect that she had arrived that morning, and that the Collector had taken the master's statement, and had forwarded it to the Board of Customs.

The statement so forwarded, and the Collector's letter inclosing it, were as follows:—‡

Mr. Browne to the Commissioners of Customs.

"Honourable Sirs, "*Custom-House, Plymouth, April* 11, 1863.

"I beg to submit, for your Honour's information, the inclosed statement of the master of the steamer Alar, of London, to which he has affixed his signature. He states that his vessel is a regular trader between Newhaven and the Channel Islands.

"Respectfully, &c.

(Signed) "N. E.. BROWNE."

Statement of Mr. Back, Master of the screw-steamer Alar.

"I cleared from Newhaven on the 4th April for Alderney and St. Malo, in ballast, and sailed from thence on Sunday the 5th, having on board about thirty passengers of whom about six were in the cabin, and a quantity of packages, which I supposed contained provisions and passengers' baggage, Before leaving, a principal party was pointed out to me by the owner of my ship, and I was informed by him that the provisions belonged to this party, and that I was to obey his instructions.

"On Sunday, about 3 P.M., my engine broke down, owing to the bursting of the feed-pipe, and I was compelled to rake out fires, and blow off steam; the engineer repaired damage, and after about seven or eight hours' delay, I proceeded on my voyage. Broke down again on Monday morning, from

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* Appendix, vol. i, p. 402. † Ibid., p. 401. ‡ Ibid., p. 408.

some cause, and proceeded, after repairs and similar delay. Laying to on Tuesday afternoon and night, weather very thick, and blowing from westward.

"On Wednesday, about 11 A.M., saw a steam-ship a long way off to the westward, with signal flying, but I know not what colours. The passenger before-mentioned asked me to bear down to the ship, which I did; but before reaching her, my engine broke down again, when the steamer came up to me, and took my vessel in tow. The steamer towed me towards the coast of France, in order that I might get shelter to effect repairs. She towed me for about an hour, then the rope parted; and in coming back to fetch me again, the tow-rope got foul of the large steamer's propeller, and caused her to fall down upon us, damaging our stanchions, and carrying away our bowsprit.

"The passenger before-mentioned then asked me to transfer the provisions and baggage to the large steamer, which was done, by about twenty of the passengers, who also went on board the steamer, where they remained. I was then asked by a person in authority on board the large steamer, if I would take two men who had been badly scalded to any port where there was an hospital, which I consented to do, and they, with about nine or ten others, and the person who had spoken to me about the sick men, came on board my vessel; and I at once proceeded for the first English port I could make that had an hospital.

"I parted with the large steamer on Thursday afternoon. On the afternoon of Friday we again broke down, and were delayed about the same time as before. About 2 A.M., on Saturday the 11th, we sighted the Eddystone, and bore up for Plymouth, which we reached about 4·30 A.M., when we landed the person we had taken with us from Newhaven—the person who spoke to us on board the steamer—about one dozen men, including the men from the steamer, and the two sick men for the hospital. I heard the large steamer was called the Japan, but I did not see her name on her stern, as I had enough to do to attend to my own ship.

(Signed) "J. F. BACK, *Master of the Alar.*

"*Custom-House, Plymouth, April* 11, 1863.

(Signed) "N. E. BROWNE, *Collector.*"

On the 16th April, Earl Russell received from Mr. Adams a Note inclosing two depositions purporting to be made by seamen who had shipped in the Japan at Greenock, as part of her crew, and had since returned to Liverpool. The Note and copies of depositions were as follows:—*

Mr. Adams to Earl Russell.

"My Lord, "*Legation of the United States, London, April* 15, 1863.

"I have the honour to transmit copies of two depositions of British subjects, who appear to have been solicited to engage in the unlawful expedition of the Japan, *alias* the Virginia, against the commerce of the United States. I append a list of the officers and men, subjects of Great Britain, shipped at the Sailors' Home in Liverpool, a large part of whom have been induced to join the piratical expedition. Likewise a list of the men who refused to enlist, left the Virginia, and returned to Liverpool.

"It is not without great pain that I feel it my duty to point out to your Lordship these transactions at Liverpool, and the extent to which, if not in some way prevented, they are calculated to give rise to complaints in the United States of the violations of neutrality deliberately committed by Her Majesty's subjects in the port of Liverpool.

"I pray, &c.

(Signed) "CHARLES FRANCIS ADAMS."

Deposition of Edward Thompson.

"Edward Thompson, of No. 18, Denison Street, in Liverpool, makes oath and says:—I am an able seaman, and served for five years in a man-of-war, on Her Majesty's ship Neptune and others. I was shipped from Liverpool to Greenock to join the steamer Japan, as I was told, bound on a voyage to Singapore. She was advertised in Sailors' Home as bound for this port. I belong to the Royal Naval Reserve. We sailed from Greenock on the 2nd day of April instant. Captain Hitchcock was in command. We sailed first down towards the Isle of Man. We then tacked and went north through the North Channel and down the west coast of Ireland, passed Cape Clear, and steered east up the Channel. Ushant Light was the first light we sighted; went towards St. Malo. We then put her to the westward, and dodged at slow steam all night. We fell in with the Alar steamer just off Morleux; we were not more than three or four miles from land at the time. When the Alar saw us she hoisted a flag for a pilot; after she got her pilot on she hoisted a flag of distress. We had taken her in tow before the pilot reached us. We floated about until night, then got the Alar alongside, and commenced to discharge the cargo into the Japan. We were three nights engaged in discharging the cargo; we did nothing in the daytime. She brought to us guns, shot, shell, rockets, ammunition, rifles, cutlasses, and all sorts of implements of war. I counted nine Whitworth guns to be mounted on the decks. I may be mistaken about the maker's name. I only know they were breech-loading guns. I understood there was one large pivot gun on board when we left Greenock. I left the vessel on Friday last in the steamer Alar. After we got all the cargo discharged from the Alar into the Japan, at 4 o'clock on Friday afternoon, while we were off Brest, about two miles from land, the new captain who came to us in the Alar, having dressed himself in regimentals, in a blue uniform with a star in the epaulettes, had all hands piped aft by the boatswain. He then directed the lieutenant to read the articles, and then said, 'We are not bound for Singapore, we are going to sail under the Confederate flag, the same as the

* Appendix, vol. i, p. 412.

Alabama, to sink, burn, and destroy vessels belonging to the United States. All of you who wish to join, I will give 10*l.* in cash as soon as you sign the articles, and you who do not wish to join can go back in the Alar. Those who join shall also have 1*l.* per month extra.' The captain told us her name was to be the Virginia, and this was the name mentioned in the articles which we were required to sign. They had the Confederate flag on board at the time laid down on the floor of the cabin, but it was not hoisted. The articles were for three years, or during the war with the United States. During the night, while we were discharging the cargo from one vessel to the other, we were at anchor very close into the land; not more than half a mile from the land, opposite a magazine which lies a quarter of a mile from Ushant Light. We went to this place, or very near there, every night. After reading the articles, the men who refused to sign asked about their wages. They were told that Captain Hitchcock would settle this after we arrived at Liverpool. I saw Mr. Hitchcock yesterday at Jones and Co.'s office, No. 28, Chapel Street, Liverpool. This house of Jones and Co. acted as agents for shipping the men. One of their clerks was at the steamer which took us around from Liverpool to Greenock. They signed all the shipping notes; at least, they were all made payable there at Jones and Co.'s offices, and they have paid them since. They paid me my shipping note yesterday at their office in Liverpool. There were ten sailors lately belonging to the British Navy from Portsmouth, who came out in the Alar, but refused to join the vessel. They received 2*l.* a-piece from Captain Hitchcock not to say anything about the matter. This was paid them while we were returning to Plymouth. Mr. Jones, one of the firm in Chapel Street, Liverpool, who came out to us in the Alar, was present at the time when the money was paid, and ordered Captain Hitchcock to pay it to the men. Mr. Jones seemed to [take] charge of everything. The report was that she, the Virginia, was to go to Madeira. She had not more than five days' coal when we left her. She is an iron vessel, very slightly built, with a full poop as far as the after scuttle hole to fire-room and top-gallant forecastle. Three masts, square rigged forward; fore and aft, main and mizen. She has one funnel between the fore and main mast; a house over engine-room, with a donkey engine in it. The Alar is a British steamer hailing from London. When she came out to meet the Japan or Virginia, as she is called, she sailed from Newhaven.

(Signed) "EDWARD THOMPSON.

"Sworn before me, at Liverpool, this 14th day of April, 1863.

(Signed) "J. PEARSON, *a Commissioner to Administer Oaths in Chancery in England.*"

Deposition of Thomas Mahon.

"Thomas Mahon, residing at No. 8 Court, Gore Street, Toxteth Park, Liverpool, being sworn, says:—

"I am a native of Liverpool, and am a labourer. On or about the 27th day of March last past hearing that a steamer was wanting men for Singapore, I went to the Sailors' Home in Liverpool, and was introduced to a man as the captain. I don't remember his name at present; I believe it is Hitchcock. He is in Liverpool now. He told me he was Captain of the Japan. He said he wanted firemen and trimmers, and the next day, the 27th, I went with him to the shipping-office, and there signed articles for steamer Japan for Singapore, or any intermediate port, for two years. Captain Hitchcock engaged me, and witnessed my signing. I was to have 3*l.* 10*s.* per month. About fifty men in all signed in the same way. When we had signed, we were told to take our clothes to 'Jones and Co.'s,' No. 28, Chapel Street, and would then receive an advance note for a month's pay. I took my clothes there, and received a note for 3*l.* 10*s.*, payable ten days after the ship sailed from Greenock. At Jones and Co.'s we were told by the Captain Hitchcock to meet at the Glasgow boat at 5 o'clock on Monday afternoon at the dock. We went as ordered, and our clothes were brought down, and our fares were paid by a clerk from Jones and Co. We sailed the same evening in the Heron, about fifty in all. We arrived at Greenock about 3 or 4 the next afternoon, and a tug came alongside and took us off the Heron and put us on board the screw-steamer Japan lying in the river opposite Greenock. Captain Hitchcock came off in the tug and took us on board. He went on board with us; he gave us our orders. I had shipped as coal trimmer, and believed she was an English steamer, and going to Singapore. She had then the English ensign flying. Captain Hitchcock remained on board and exercised command. We remained at Greenock till Wednesday. On Thursday, about 6 in the morning, when we got under weigh, the pilot said we were going on a trial trip. On the Wednesday night the revenue officers came on board, after the stores came on board, and put seals on the stores. The stores came off in a steamer and a lighter. They consisted of large quantities of spirits, clothing, blankets, beds, knives and forks, tins, and the like. I did not see any other Government officers visit the ship. We sailed out, I believe, on the Thursday morning, as we supposed on the trial trip, and steered towards sea. In the afternoon we returned to the lighthouse down the Clyde and stopped, but did not anchor. A tug came to us there with some more men and provisions from Greenock, and as soon as we had taken them on board we started down again and steered right to sea. The pilot left us next morning off Castletown, Isle of Man. Captain Hitchcock had command of the vessel. About two days after we made land, as I was told, on the coast of France, and we kept beating about there for several days. We wondered why, but did not ascertain the reason.

"On Monday, the 6th, an English screw-steamer, the Alar of London, came to us and spoke us. We were so near the coast of France that a shot could be fired ashore. Captain Hitchcock told the Alar to go under the island. The Alar soon after made a signal as if she was broke down, and the Japan took her in tow. We towed her awhile and the hawser broke. She then steamed away herself, and we soon after spoke a French pilot-boat and we took a pilot on board, as did also the Alar. The Alar sailed away into a small bay and we followed, and came to an anchor near the shore, no further off than I could have thrown a stone. The Alar then made fast alongside, and that night a very large case of guns and a quantity of ammunition in small cases were taken on board the Japan from the Alar. The next morning both vessels sailed out and we went out to sea, and the Alar into another bay. In

the afternoon we joined the Alar in the other bay, and took on board the rest of her cargo, consisting of guns and ammunition. Men in the meantime were engaged making the fittings for the guns. The same afternoon a tall man they called Lamont or Dupont came on board from the Alar and took charge of the Japan. He came on deck in uniform and called all the men aft. He told us she was no more to be called the Japan but the Virginia, Confederate war-steamer. He produced articles; and reading them to the effect that there would be discipline same as the Alabama or any other under the Confederate flag, he said he was going to burn and destroy all North American vessels, and told us we should have 10*l.* bounty to sign for three years under the Confederate flag. One of the men asked about prize money, and he said we should have the same as the Alabama. That any man who had a family could have half-pay. Eight of us went into the cabin to see what he would do with us if we would not ship. He said Mr. Jones would pay our fare through to Liverpool and anything else that we required when we came ashore. Mr. Jones was sitting at the table where they were paying the bounty and signing the articles, and said it would be all right. We and a number of others, in all about twenty-four, refused to join, and the same night we were taken to the Alar and both vessels left the bay. The next morning the Alar took the pilot from the Japan and landed him and her own about where we had picked them up I was below when she took the pilot off, and did not see the Japan after leaving her in the bay. I heard the order given to hoist the Confederate flag. Captain Hitchcock, Mr. Jones, and the chief and second mates came from her with us. We were landed at Plymouth on Saturday morning, and received from Captain Hitchcock a sovereign each to pay our way to Liverpool, and the same day came in to Liverpool in the steamer.

(Signed) "THOMAS MAHON."

"Sworn the 14th day of April, 1863.

"Before me,

(Signed) "WM. RATHBONE, *a Magistrate for the County of Lancaster.*"

Mr. Adams also inclosed the two lists mentioned in his Note. In the "list of officers and men," the only officers mentioned were the master, first mate, second mate, storekeeper, and boatswain. All of these, except the boatswain, were stated to have returned in the Alar, together with many others of the original crew of the Japan.

On the same 16th April, 1863, Earl Russell received from Her Britannic Majesty's Consul at Brest a Report, dated the 13th April, which was as follows:—*

Consul Sir A. Perrier to Earl Russell.

"My Lord, "*Brest, April* 13, 1863.

"I have the honour to report to your Lordship that I have received the following letter from Conquet:—

"'Sir, "'*Conquet, April* 10, 1863.

"'I have the honour to inform you that on the 7th of this month two English vessels, a brig and a steam-schooner, were seen in the Fromveur (a passage between Ushant and the mainland), with a signal for a pilot. Piton and Marec, pilots of Molene, went on board. The names given to them were, Japan, of Liverpool, for the brig, and Alar, of London, for the schooner, which was bound from Emzic to Liverpool with a general cargo. This vessel having sprung a leak, had requested the brig to stay by until all danger was over. After beating about all day they anchored in Bertheaume Bay, about 6 in the evening, where they tried to tranship part of the cargo from the schooner to the brig, but a heavy surf prevented their doing so. The pilots offered to bring the vessels into Brest, which was refused. Next morning, the 8th, they got under weigh at about 6 in the morning, went through Conquet Channel, and anchored in Stiff Bay, under Ushant, where the transhipment was effected that evening. They then sailed for Liverpool.'

"I called upon the Vice-Admiral, Commander-in-chief, to know if he had received any account of this affair from Conquet. He replied that he had not yet received the official Report, but that he had been informed of all that I had stated, and also that the schooner had struck on a rock in Stiff Bay, and that the cries of her crew had been heard at the lighthouse on Ushant. Suspecting that this transhipment might be of war contraband goods for America, he has demanded a full Report from the Commissary of Marine at Conquet, and will communicate it to me.

"I have, &c.

(Signed) "ANTHY. PERRIER."

A somewhat more detailed statement of the incidents described in the foregoing Report has been recently furnished to Her Majesty's Government by Her Majesty's Consul at Brest. This statement is as follows:—*

Consul Clipperton to Earl Granville.

"My Lord, "*Brest, September* 9, 1871.

"I have the honour to acknowledge the receipt of a despatch from the Foreign Office marked Separate, and dated 31st August last, instructing me to report to your Lordship all the information I

* Appendix, vol. i, p. 416.

Part VII.

The Georgia.

can obtain respecting the equipment of the Confederate cruizer Georgia, then known as the Japan or Virginia, off Morlaix, and the visit of that vessel to Brest, between the 4th and 9th of April, 1863, and to forward with my Report a small map or chart of the coast, explanatory of the proceedings which took place within or contiguous to the limits of French jurisdiction.

"In reply, I beg most respectfully to inform your Lordship that at Morlaix nothing is known of the Confederate cruizer Georgia, either under the name of Japan or Virginia, but the matter appears to have transpired near to Conquet, marked (A) on the accompanying chart, and was as follows:—

"On the 9th April morning, 1863, two English vessels, a brig and a steam schooner were seen in the Fromveur Channel between Ushant and the mainland (B), making signals for a pilot. Two pilots of Molène named Piton and Marec went on board. They were told that the vessels were the brig Japan, of Liverpool, and schooner Alar, of London, bound for Liverpool, with a general cargo.

"The Alar was represented to have sprung a leak, and had requested the brig to stand by her to render assistance if required. At about six in the evening of the same day the two vessels anchored in Bertheaume Bay (C), and efforts were made unsuccessfully, owing to a heavy surf, to tranship part of the cargo from the schooner to the brig. The pilots proposed to take the vessels into Brest, but were refused. The two vessels got under way at 6 A.M. of the following day, the 8th, passed through the Conquet Channel, and anchored in Stiff Bay (D), under Ushant, where the transhipment was effected, and that same evening they sailed for Liverpool.

"The official Reports made to the Admiral of the port of Brest by the French Naval Agent at Ushant and the Custom-house officer, at Conquet, state that the schooner was sighted before the brig, and that both were seen hovering about for two or three days; they were both seen close alongside of each other, the schooner apparently discharging or trying to discharge cargo into the brig. After anchoring in Stiff Bay the transhipment was actively carried on until between 7 and 8 in the evening, at about which hour the brig went to sea.

"At about 10 o'clock of the same night cries and noise of putting out boats were heard at the Lighthouse, as if proceeding from the schooner. It is supposed that the schooner foundered, and that the boats went out to sea, as nothing further was ever heard of either vessel or crew.

"I beg further to inform your Lordship that two steam-vessels were constructed and partly fitted out at Nantes, during the war in America, for the Confederate States. On my return to my post I shall be in a position to forward all the information connected with them, should your Lordship consider it expedient for me to do so.

"I have, &c.
(Signed) "ROBT. CHAS. CLIPPERTON."

The places called Conquet and Bertheaume Bay, and mentioned in the two preceding Reports, are on the coast of France, in the department of Finistère. The Baie du Stiff, or Stiff Bay, is on the coast of the French island of Ouessant, or Ushant.

From the statements contained in the preceding depositions and Reports, it appears that the vessel afterwards called the Georgia sailed from Greenock under the name of the Japan, as a merchant-vessel, on a trading voyage to the East Indies, and that until she arrived off the coast of France her crew were not aware that this was not her true character and destination; that she was armed for war in French waters; and that she there took on board her Commander and officers, who then and there enlisted a crew.

With reference to Mr. Adams' Note of the 15th April, 1863, the following letter was on the 21st April addressed to him by Earl Russell:—

*Earl Russell to Mr. Adams.**

"Sir, "*Foreign Office, April* 21, 1863.

"I stated to you in my letter of the 16th instant, that your letter of the previous day, respecting the case of the Japan, otherwise the Virginia, had been referred the proper Departments of Her Majesty's Government, but I will not delay informing you that Her Majesty's Government have received from the authorities at Glasgow, and at Greenock, reports, from which it appears that that vessel was constantly visited while she was in course of construction, and that the surveys seemed to show that she was intended for commercial purposes, and that her framework and plating were of the ordinary sizes for vessels of her class.

"She was entered on the 31st ultimo, as for Point de Galle and Hong Kong, with a crew of forty-eight men. She shipped on the 1st instant the bonded stores stated in the margin,† and she cleared on the same day in ballast for Point de Galle and Hong Kong.

"Her Majesty's Government are further informed that the Japan left the anchorage early on the morning of the 2nd instant, with the ostensible purpose of trying her engines, intending to return, having on board several joiners, who were fitting up her cabins. These men, who are said to have been employed at a later time in fitting up a magazine, were subsequently landed on some part of the coast lower down the Clyde.

"The Custom-house officer who visited the Japan on the evening of the 1st instant to see that her stores were correct, reports that he saw nothing on board which could lead him to suspect that she was

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* Appendix, vol. i, p. 418.

† 115 gallons spirits, 32 gallons wine, 244 lbs. tea, 159 lbs. coffee, 212 lbs. tobacco 10 lbs. cigars 18 cwt. 3 qrs. 2 lbs sugar, 2 cwt. 2 qrs. 8lbs. molasses, 2 cwt. 1 qr. 5 lbs. raisins, 1 cwt 1 qr. 8 lbs. currants.

intended for war purposes. Her Majesty's Government are further informed that she was not heavily sparred, and that she could not spread more canvas than an ordinary merchant-steamer.

"I am, &c.

(Signed) "RUSSELL."

On the question whether persons who had joined the vessel, or who had induced others to join her, could be prosecuted as offenders against British law, the Law Officers, on the 30th April, 1863, advised as follows:—*

"In our opinion it is not competent to Her Majesty's Government at present to take any steps in the matter to which Mr. Adams' despatch of the 15th April refers.

"So far as relates to British seamen who have accepted the proposal made to them in French waters to engage in the belligerent service of the Confederate States, we think that they have offended against the 2nd section of the Foreign Enlistment Act, and will be liable to be proceeded against for a misdemeanour if they should be found within British jurisdiction; the first part of that section (which applies to the persons entering into such engagements) being in the form of an absolute prohibition, applicable generally to British subjects, without reference to the place where the act prohibited may be done. But, inasmuch as these seamen are not at present within British jurisdiction, no steps can now be taken for their prosecution.

"With respect to the seamen who have returned to this country, it seems clear that their conduct has been laudable, and not criminal. They were induced, by false and fraudulent representations, to enter into engagements at Liverpool for a perfectly lawful voyage, and afterwards, when apprized of the deception which had been practised upon them, and invited to enter an engagement of a different character, they refused to do so.

"With respect to Captain Hitchcock, and any other persons who may have been instrumental in inducing the crew of the Japan to take service in her before her departure from this country, it is clear that, (howsoever censurable their conduct may have been) they did nothing contrary to the Foreign Enlistment Act; for it was not until the ship was in French waters that any proposal appears to have been made to any of the men to enter into the belligerent service of the Confederate Government, and the latter part of the 1st section of the Foreign Enlistment Act (which applies to the case of persons 'hiring, retaining, engaging, or procuring' others to enter into the belligerent service of a foreign State) is expressly limited to acts done within the territorial jurisdiction of the British Crown."

On the 8th July, 1863, Earl Russell received from Mr. Adams a Note, in which referring to the Georgia, and stating (as the fact was) that his former representations concerning that vessel had unhappily been made too late for Her Majesty's Government to interpose effectively, he called Earl Russell's attention to the circumstance that she had been, and until recently was, registered in the name of a British subject. The portion of the Note in which reference was made to this matter was as follows:—

*Mr. Adams to Earl Russell.**

(Extract.) "*July* 7, 1863.

"It is with great regret that I feel myself once more compelled to call your Lordship's attention to the circumstances attending the outfit of the steamer called the Japan. It now appears that that vessel was, at the time of her escape, and has continued until very lately to be, the property of a British subject, residing in Liverpool. That person is Thomas Bold, a member of the commercial house of Jones and Co. I have information which leads me to believe that only within a few days has Mr. Bold notified the Collector of Customs at Liverpool of his sale of this vessel to foreign owners, and requested the register to be cancelled. That act was not completed until the 23rd of June last. It would appear from these facts, should they prove to be true, that this vessel has remained the property of a British subject during a considerable time in which she has been engaged in committing extensive ravages upon the commerce of a nation with which Her Majesty is at peace. The fact of the outfit of that vessel for hostile purposes has already occupied the attention of your Lordship, in consequence of former representations, unhappily made too late for effective interposition. But the circumstances of the retention of the ownership by a British subject for so long a period after she was known to be engaged in hostilities against the United States, is of too grave a character to justify me in omitting to call your Lordship's particular attention to it, in advance of the possibility of receiving instructions respecting it."

On inquiry it appeared that the certificate of registry of the steamer Japan, which had on the 20th March been issued to Bold by the Collector of Customs at Liverpool, had on the 23rd June, 1863, been delivered up by Bold to the Collector, with the following letter:—†

* Appendix, vol. i, p. 419.

† Ibid., p. 421.

Mr. Bold to Mr. Edwards.

"Sir, "*Liverpool, June* 23, 1863.

"I beg to hand you the certificate of registry of the screw-steamer Japan, official No. 45,868, port No. 93, as I have conveyed the vessel to an alien.

"I am, &c.

(Signed) "THOMAS BOLD."

The circumstance that Bold's name had, on his own declaration, been entered on the register-book as the owner of the vessel, and had continued to be so registered till the 23rd June, did not render him responsible for acts done during the interval by the persons who had the actual possession and control of her, unless it could be proved that he was himself a party to such acts, of which there was no evidence. Nor could he have been prosecuted under the Foreign Enlistment Act for participating in an unlawful equipment of the ship, on proof merely that he was the registered owner, and without any evidence to show that he had been actually concerned in so equipping her within Her Majesty's dominions. Of this again there was no evidence. No proceedings, therefore, were or could have been taken against Bold. From a despatch addressed by the United States' Consul at Liverpool to Mr. Seward, dated 7th August, 1863, it appears that the Consul had in the preceding July consulted the legal adviser who had been employed by him in the matter of the Alabama (Mr. Squarey) on this subject, and Mr. Squarey advised as follows:—*

Mr. Squarey to Mr. Dudley.

(Extract.) "10, *Water Street,* 1863.

"It does not appear to me the engagement of the crew can be treated as an offence against the Act, because the only legal contract binding upon the crew was that appearing upon the articles. The men were not liable to do anything except what they had agreed to do by the articles; and from the statements of the men whom I saw, it did not appear that they knew when they shipped that it was expected or intended that they should serve on board a man-of-war or privateer. As regards the liability of the British registered owner to make good to the owners of the American vessel destroyed the loss sustained by them, I conceive it must depend upon the question whether those in command of the vessel at the time can be considered to have been the agents of the British owner. If they were such agents, and there was any evidence to show that the destruction of the American ship could be considered as an act within the scope of their authority, I have no doubt that the owners would be liable; but it appears to me that the circumstances to which I have previously referred, go very far to rebut the presumption that such agency existed, and to prove that in destroying the American vessel the officers and crew were acting not for the British owner, but for the Government of the so-called Confederate States. In such case I do not think that any liability could be established against the British owner, for it is now well established that the mere fact of being on the register of the ship does not involve liability for the acts or engagements of the master and crew, and that such liability is in fact a question depending upon express or implied agency in every case.

"Although, therefore, I do not see how a British owner is to be made liable, there is, in my opinion, a case which justifies the American Government in bringing the matter before the notice of the British Government, and requiring explanations from that Government of the circumstances under which a British vessel is found to be engaged in the destruction of vessels belonging to American citizens."

With reference to this part of the subject, it may be here stated that, in the month of January 1864, a prosecution was commenced by the direction of Her Majesty's Government against two persons, named Jones and Highatt (who were admitted to be partners with Bold in the business of ship-storedealers and ship-chandlers, though not in that of ship-owners), for having, within the Queen's dominions, hired and procured men to engage in the service of the Confederate States by enlisting on board the Georgia. The case came on for trial at the Liverpool Assizes in August 1864, and the defendants were found guilty and sentenced to pay a fine. No evidence could be produced on the part of the prosecution to show that the men who shipped on board the vessel at Greenock had at that time, or when they were originally hired, any intention to enter the Confederate service, although there was evidence that the defendants hired them with the intention of afterwards inducing them to enlist in that service.

The Japan, after having been armed, was commissioned as a public ship-of-war of the Confederate States, under the command of a Lieutenant Maury, formerly an officer in the Navy of the United States, and under the name of the Georgia, by which name she was afterwards known.

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* Appendix, vol. i, p. 427.

In May 1863, she was admitted into the harbour of Bahia, and coaled there; on the 16th August she arrived at Simon's Bay, in the Colony of the Cape of Good Hope, and was allowed to repair and coal; and in October 1863 she is believed to have touched at Teneriffe and coaled at that place. On or about the 28th October, 1863, she arrived in the roadstead of Cherbourg, and was shortly afterwards admitted into the dockyard for repairs. She was admitted as a man-of-war, on the order of the Minister of Marine, and her repairs (which were not extensive) were made by the dockyard workmen, and are stated to have been paid for at the usual rate of work done on ships of war, which is less than the rate charged for work done on merchant ships. She remained at Cherbourg during nearly four months. On the 25th March, 1864, she arrived at Pauillac, the boarding station of Bordeaux, and was reported as in want of repairs for her steam-machinery and of provisions. She was allowed to keep her gunpowder on board, on condition of mooring at Lormont, an anchorage a little distance below Bordeaux. Her machinery having been surveyed and certified to require a fortnight for its repair, she was given that time to remain at Lormont. She remained at anchor however until the 28th of April.*

Whilst the Georgia was at Cherbourg, the Florida being at the same time in the harbour of Brest, it was ascertained that some seamen had been induced to go from Liverpool to France in order to join those vessels. Four of these men were identified, upon inquiry made by order of Her Majesty's Government, as belonging to the Royal Naval Reserve, and they were forthwith discharged from the force. One Campbell, a keeper of a sailors' boarding-house at Liverpool, was found to have been concerned in inducing them to go, and was prosecuted and brought to trial, and pleaded guilty. It was deemed sufficient by the Judge to exact security against a repetition of the offence, by requiring him to enter into recognizances in the sum of 150*l.* to appear for Judgment when called upon.

On the 2nd May, 1864, the Georgia came into the port of Liverpool. Very soon after her arrival there, her crew were discharged, her warlike stores were lodged in warehouses (where they remained until after she left Liverpool, as hereinafter mentioned), and the vessel herself was removed to a dock at Birkenhead, dismantled, and offered for sale by public advertisement in the following terms:—

"For sale, the splendid screw-steamer Georgia, about 750 tons, builder's measurement; built by Messrs. Denny, of Dumbarton, 1863; has engines of 200 horse-power; speed, 12 knots; carries a large cargo; is abundantly found in stores, and ready for immediate employment. For specification and further particulars, apply to Curry, Kellock, and Co."

The reason given for selling her was that she was deficient in strength and speed, and was, by her construction, unsuitable for a cruizer.

Directions had been given, shortly after her arrival, that, if not *bonâ fide* sold, she should be ordered to leave the port as soon as she had received necessary repairs.

With respect to the manner in which these directions should be enforced, and the power to enforce them, the Law Officers of the Crown were consulted, and advised as follows:—†

"*Opinion of the Attorney- and Solicitor-General.*

"If the Georgia is still (as has been hitherto assumed) a public ship of war of a belligerent Power, she is, while within Her Majesty's dominions, exempt from all civil and municipal jurisdiction, and it is not, therefore, upon any civil or municipal law of this realm that Her Majesty's Government can act, if they should find it necessary to take any compulsory measures with respect to her; nor will the execution of those measures belong to the Commissioners of the Customs, or to any other civil authority.

"By the universal Law of Nations, and by the prerogative right of regulating the intercourse between this country and the public ships of war of a foreign Government, which belongs to Her Majesty in right of her Crown, it is competent for Her Majesty to prohibit the entrance of any foreign public ship of war into Her Majesty's territory, except under such conditions as she may think proper from time to time to impose; and if any such prohibition is not duly obeyed, it is, in our opinion, perfectly within the competency of Her Majesty to enforce its observance by her military or naval officers, and by the use of force, if necessary.

"If the Georgia has ceased to be a public ship of war of the Confederate States, and has been sold to and become the private property of any of Her Majesty's subjects, the case is different. Under these

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* Appendix, vol. i, p. 442.

† Ibid., p. 456.

circumstances, Her Majesty's orders would no longer be applicable to this ship; and of course, no forcible or other means could be used for the purpose of compelling their observance in a case to which they would not apply. The Georgia, after such a sale, would be exactly in the same situation as the Gibraltar (formerly called the Sumter) was last year: she would be governed by the ordinary municipal law of this country, like any other private ship, the property of British subjects.

(Signed) "ROUNDELL PALMER.
"R. P. COLLIER.

"*Lincoln's Inn, May* 23, 1864."

The vessel was sold to Mr. Edward Bates, a shipowner carrying on a very extensive business at Liverpool.

Mr. Adams, on being informed of the sale, wrote to Earl Russell, stating that, on behalf of his Government, he must decline to recognize the validity of it, and must claim the right to capture the vessel wherever she might be found on the high seas.

On the 27th July he again wrote to Earl Russell, suggesting that there was reason to suspect that the sale was fictitious, and the vessel intended to be again employed in the Confederate service.

To this letter Earl Russell replied as follows :—*

Earl Russell to Mr. Adams.

"Sir, "*Foreign Office, August* 8, 1864.

"With reference to my letter of the 28th ultimo, I have the honour to state to you that Her Majesty's Government do not see sufficient grounds for coming to the conclusion upon the statements contained in your letter of the 27th ultimo, that the steamer Georgia is about to be again used for belligerent purposes. With a view, however, to prevent the recurrence of any question such as that which has arisen in the case of the Georgia, Her Majesty's Government have given directions that, in future, no ship of war of either belligerent shall be allowed to be brought to any of Her Majesty's ports for the purpose of being dismantled or sold.

"I am, &c.
(Signed) "RUSSELL."

The directions mentioned in the above letter were issued accordingly, and were notified in the "London Gazette" as follows:—

"*Extract from the 'London Gazette' of September* 8, 1864.

"*Foreign Office, September* 8, 1864.

"It is hereby notified that Her Majesty has been pleased to order, that for the future no ship of war belonging to either of the belligerent Powers of North America shall be allowed to enter, or to remain, or be, in any of Her Majesty's ports for the purpose of being dismantled or sold; and Her Majesty has been pleased to give directions to the Commissioners of Her Majesty's Customs, and to the Governors of Her Majesty's colonies and foreign possessions, to see that this Order is properly carried into effect."

On the 8th August, 1863, the Georgia, being then registered in the name of the said Edward Bates, sailed from Liverpool for Lisbon. Off Lisbon, and whilst on the high seas, she was captured by the United States' war-steamer Niagara, and was sent to Boston for adjudication.

Mr. Bates, her owner, thereupon wrote to Earl Russell as follows, complaining of the seizure of his ship—

Mr. Bates to Earl Russell.†

"My Lord, "*Liverpool, August* 27, 1864.

"I beg to call your Lordship's attention to a very serious outrage which has been committed upon me by the United States' man-of-war Niagara, in having forcibly seized and sent to the United States my screw-steamer Georgia.

"This vessel was, in the month of May last, lying in the Birkenhead Dock, and was offered for sale by public advertisement by the well-known ship-brokers, Messrs. Curry, Kellock, and Co., of this town.

"I had her examined, and, thinking her a suitable vessel, I entertained an intention to purchase her. I knew she was the property of the Confederate Government, and thereupon, before completing a purchase, I communicated with the Custom-house authorities at Liverpool, in order to ascertain whether the authorities would grant me a British register, without which I should not have bought her.

"The Customs authorities took some time to consider, and, during all this period, the advertisement

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* Appendix, vol. i, p. 459. † Ibid., p. 464.

continued in the public papers, and I have no doubt that this public announcement was seen and well known to the American Consul at this port.

"Eventually, I was informed that a British register would be granted to me if I bought her. I concluded a purchase of her and paid for her on the 13th June last. The purchase-money I paid to Messrs. Curry, Kellock, and Co., and received a bill of sale signed by James D. Bullock. This document I presented at the Custom-house, where I made the usual declaration of ownership, and the ship was thereupon duly registered in my name.

"During the whole of this period she was in a public dock, open to the inspection of the public, and where I dismantled her, and proceeded to alter and repair her. All this time I did not receive any intimation from either my Government or from the American Consul or other authorities that my purchase was invalid.

"In July I received overtures from Messrs. Bennett, of London, through Messrs. Meacock, of Liverpool, as brokers for the Portuguese Consul in London, for a charter of the Georgia on time to the Portuguese Government. I eventually accepted this charter, and then proceeded to fit her up in accordance therewith, as a mail and passenger boat.

"Whilst she was being thus fitted up the Niagara visited the Mersey. The vessel was still open to inspection, and I have reason to believe that the officers of that vessel did inspect her, but no intimation was made to me of the intention to seize my property as soon as she should get into open waters.

"So secure did I feel in the possession of my property that, although the Consul-General for Portugal conveyed to me his feeling of apprehension of the Niagara, I scouted the idea as something unworthy of credence, and on the 8th August she sailed from the Queen's Dock in Liverpool for Lisbon, there to run in the service of the Portuguese Government, from that place to the coast of Africa and back, with mails, goods, and passengers. On the completion of this service the Portuguese Government covenanted and agreed to deliver my ship to me in the port of Liverpool.

"Your Lordship may therefore conceive the astonishment and indignation with which I received the intelligence on my return to Liverpool of the vessel having been seized off Lisbon by the United States' steamer Niagara, and sent to Boston.

"I am well known in Liverpool as an extensive shipowner.

"I have no connection with the Confederate Government or their agents, and never have had, directly or indirectly.

"I bought the vessel for the purposes of my own business, on an arrangement with the Custom-house authorities that I should receive for her a British register, and in the belief that a British register would protect my property from the outrage which has been practised upon me.

"I respectfully submit these facts to your Lordship's consideration, and trust that Her Majesty's Government will forthwith take such steps as they may deem necessary in order to procure for me a restitution of my ship, and compensation for the injury I have sustained.

"I have, &c.

(Signed) "EDWARD BATES."

Mr. Bates was informed in reply, that the question must go before a Prize Court in the United States, and that he must be prepared to defend his interest therein. The view entertained of the case by Her Majesty's Government was afterwards more fully explained to him in the following letter:—*

Mr. Hammond to Mr. Bates.

"Sir, "*Foreign Office, September* 19, 1864.

"I acquainted you shortly, by Lord Russell's direction, in my letter of the 9th instant, that the case of the Georgia must go before the Prize Court in the United States, and that you must be prepared to defend your interest therein.

"I am now further to acquaint you, in reply to your letter of the 27th ultimo, that, having consulted the Law Officers of the Crown, Lord Russell desires me to state to you that the Niagara, in capturing the Georgia and sending her into a Prize Court for adjudication, which it is to be assumed will be the course she will pursue, has not exceeded the limits of her belligerent rights.

"If the Georgia had formerly belonged to the mercantile marine of the Confederate States, and been the property of a private subject of the Confederate States, the United States' cruizer would have been justified in seizing her upon the high seas, and in taking her into a Prize Court for the purpose of submitting to proper judicial investigation the question whether the transfer of an enemy's vessel to a neutral *flagrante bello* had been *bonâ fide*, and executed in the manner and in the circumstances which international law requires. But it is a fact beyond the reach of controversy or denial that the Georgia had formed, till a very recent period, part of the Confederate Navy. The belligerent, therefore, had *a fortiori*, the right to seize her and endeavour to obtain her condemnation in a Prize Court. That Court will have to determine not only the question whether the transfer of the Georgia to a neutral owner was real, and accompanied by an entire extinction of all the interests and rights of the former hostile owner, but the much graver preliminary question whether (as against the right of capture of the other belligerent) a ship of war can be lawfully transferred by a belligerent *flagrante bello*, in a neutral port to a neutral, with whatever publicity and however completely the transfer may have been actually made, and whatever alterations the structure, equipment, or employment of the vessel, so *de facto* transferred, may have undergone while in the possession of the neutral.

* Appendix, vol. i, p. 468.

"Lord Russell is further advised that the officers of the Custom-house at Liverpool, in granting to this vessel, upon the production of proper documents, a British register, merely acted in conformity with the municipal laws of this country, which neither undertakes to assist and facilitate, nor pretends upon the high seas to overrule or supersede the right of maritime capture belonging to a belligerent under the law of nations as administered in Prize Courts; and that it was certainly no part of the duty of Her Majesty's Government to inform a private individual who might entertain the idea of purchasing this vessel of any risk which he might incur by so doing. Nor is Lord Russell aware of any obligation imposed by international law and comity upon the Representatives or Agents of the United States in this country or upon the officers of the Niagara, when at Liverpool, to give any notice or intimation whatever that the Niagara or any other cruizer of the United States might still consider the vessel a proper subject of capture, whether transferred or not to a neutral, and under whatever register or flag she might sail.

"I am to add that the application contained in your letter of the 10th instant for documents in the case is now under consideration, and that an answer will be returned to you as soon as possible.

"I am, &c.

(Signed) "E. HAMMOND."

Summary.

The Georgia was a vessel built at Dumbarton in Scotland, and sent to sea from the port of Greenock. For whom she was built, and by whom and under what circumstances she was sent to sea, are matters as to which Her Majesty's Government has no information beyond what has appeared in the foregoing statement.

The Georgia neither appeared to be, nor was, up to the time when she sailed from the port of Greenock, fitted out, armed, or equipped for war, nor specially adapted to warlike use. She appeared to be constructed and intended for a ship of commerce. She proved, in fact, to be not fitted for employment as a cruizer, and for this reason she was dismantled and sold, after having been at sea for about nine months altogether, exclusive of the time during which she remained in the harbours of Cherbourg and Bordeaux.

She was registered under the name of the "Japan," in the name of a Liverpool merchant, and was entered outwards and cleared in the customary way for a port of destination in the East Indies. She was advertised at the Sailors' Home in Liverpool as about to sail for Singapore, and her crew were hired for a voyage to Singapore or some intermediate port, and for a period of two years. The men, when they were hired, believed this to be the true destination of the ship, and her voyage to be a commercial one; and they appear to have continued under this belief until after the vessel had arrived off the coast of France.

She was armed and equipped for war in the waters of France; she there took on board her Commander and officers; and her crew were enlisted there, the crew who had shipped at Greenock having been released from their agreement, and provided with the means of returning, if they chose to do so.

Her officers and armament appear to have been conveyed to the French coast, or its immediate vicinity, in a steamer which had cleared from Newhaven in ballast for Alderney and St. Malo, and which was stated to be a regular trader between Newhaven and the Channel Islands. The master of the steamer stated that the persons whom she conveyed were taken on board as passengers.

Her Britannic Majesty's Government had no reasonable grounds to believe that the vessel was intended to cruize or carry on war against the United States until after she had departed from the waters of Great Britain and arrived in the waters of France. The Government had indeed no knowledge or information whatever about her, previous to the receipt by Earl Russell of Mr. Adams' note of 8th April, 1863.

"Information about the construction and outfit of the vessel" had, for a long time before her departure, been in the possession of Mr. Adams; and Mr. Dudley, who was (as it was his duty to be), in constant communication with Mr. Adams, knew of the hiring of seamen for her, and had her examined by a man sent on board by him for that purpose. The information possessed by Mr. Adams, was not, however, in his opinion, such that proceedings could be founded upon it; and no communication was made by him to Her Majesty's Government on the subject until six days after the ship had sailed. At that time Mr. Adams had received further information (which proved to be erroneous), that the vessel was to receive her armament at Alderney, within the Queen's dominions; and he then made up his mind to "send notice of it to the British Government, and leave it to them to act in the case as they might think fit." The vessel did not go to Alderney; and Mr. Adams' communication was (in his own words) "too late for effective interposition."

The Georgia, after having been armed for war in French waters, was commanded by an officer commissioned as such by the Government of the Confederate States. Her officers were, as Her Majesty's Government believes, Americans belonging to those States, Of the composition of her crew, Her Majesty's Government knows nothing, except that it appears to have consisted, in part at any rate, of British subjects, who were induced by the persuasion and promises of her Commander to take service in her whilst she was in French waters.

The Georgia was received as a ship of war of the Confederate States in the neutral ports visited by her, particularly in those of Brazil and France. On the same footing, and in the same manner, without favour or partiality, she was received in a port of the Colony of the Cape of Good Hope, and in a port within the United Kingdom.

After having been disarmed, dismantled, and sold in a British port, the Georgia was captured at sea by a United States' cruizer, as having been a ship of the Confederate States, and incapable of being transferred, during the war, to a British subject. Her Britannic Majesty's Government, whilst it saw no reason to doubt that the sale had been *bonâ fide*, did not dispute the right of the United States to capture the vessel for the purpose of submitting the validity of the transfer to the judgment of a Prize Court.

During the cruize of the Georgia, which lasted (as stated above) about nine months, exclusive of the period of her stay in the harbour of Cherbourg, no serious endeavour to intercept or capture her appears to have been made on the part of the Government of the United States.

Her Britannic Majesty's Government cannot admit that, in respect of the Georgia, it is justly chargeable with any failure of international duty, for which Great Britain owes reparation to the United States.

PART VIII.

Statement of Facts relative to the Shenandoah.

On the 12th November, 1864, Earl Russell received from Her Britannic Majesty's Consul at Teneriffe a Report dated the 30th October, 1864, from which it appeared that a vessel bearing the name of the Sea King, from London had shortly before that date arrived in the vicinity of the Madeira Islands; that she had there received on board guns and a small number of men from a British steamer called the Laurel; had been taken possession of by a person claiming to be her commanding officer in the name of the Confederate States, and had hoisted the Confederate flag. This Report was as follows:—*

Consul Grattan to Earl Russell.

"My Lord, "*Teneriffe, October* 30, 1864.

"I have the honour to inform your Lordship that the British steam-vessel Laurel (47,819) of the port of Glasgow, bound from Liverpool to Nassau, arrived here on the 21st instant for the purpose of coaling.

"The master, J. F. Ramsay, on presenting himself at this office, stated that he wished to land 43 passengers, who were to proceed to England by the next Liverpool steamer, and that these persons were the master and crew of the British steamer Sea King, (Official No. 48,547) of London, which vessel had been wrecked off the Desertas. The Laurel continued her voyage on the 22nd instant. The master, on getting up steam, and not before, landed the above-mentioned seamen.

"The master of the Sea King, P. S. Corbett, did not call at this office, as is usual in such cases, either for the purpose of making a protest or to claim assistance. Therefore, on the 25th instant, I sent to desire his attendance, and demanded the certificate of registry of his vessel, in pursuance of instructions contained in No. 13 Paragraph of the Board of Trade Instructions. On handing in his certificate he informed me that his vessel had not been wrecked, but that she had been sold in London, and delivered to her owners on the high seas; and that himself and his crew had landed here for the purpose of returning to England as passengers in the West Coast of Africa mail-steamer, due at this port on the 31st instant.

"The discrepancy between the statements of the two masters led me to seek for further information respecting this matter, and the substance of the declaration I have obtained from George Kelly, Edward Everall, John Ellison (Royal Naval Volunteers, 18,536), and John Hircus, all seamen belonging to the crew of the steam-vessel Sea King, is as follows:—

"'The Laurel sailed from Liverpool bound to Nassau with 24 supposed officers and 17 seamen, besides her own crew, 45 to 60 shells, about five tons of gunpowder, and various other munitions of war; she proceeded to Madeira, where she took about 300 tons of coals. The Sea King sailed from London on the 7th instant, and also proceeded to the offing of Funchal Roads. Both vessels then steamed to a place off the Desertas, where the sea was smooth, and the officers and men, arms and munitions of war, were transhipped from the Laurel to the Sea King on the 20th instant. The cases of arms were at once opened, and the seamen armed themselves with cutlasses and revolvers. One of the officers then took command of the vessel in the name of the Government of the so-called Confederate States of America. Some of the crew of the Laurel joined the Sea King, the remainder of her intended crew are to be sent out from England.'

"The 42 seamen now here, in charge of the former master of the Sea King, awaiting a passage to England, refused to join the Confederate vessel, though as much as 17*l.* per man was offered to them as bounty.

"In consequence of having become aware that a serious offence against British law has been committed on board a British ship, I have thought it my duty to take the depositions, upon oath, of four of the seamen of the Sea King, which I have the honour to forward to the Board of Trade, according to instructions.

"These depositions, in my opinion, contain evidence sufficient to substantiate a charge against the master, P. S. Corbett, of an infringement of the Foreign Enlistment Act; I therefore, pursuant to paragraph 127 of the Consular Instructions, deem it proper to send the offender in safe custody to England, in order that cognizance of the offence may be taken.

"I am satisfied that the 42 seamen now here are about to proceed to England by the West Coast of Africa mail-steamer, which leaves this port for England on this day.

"I have, &c.

(Signed) "HENRY C. GRATTAN."

Inclosed in the above Report were depositions on oath made by several seamen, of

* Appendix, vol. i, p. 477.

whom two belonged to the Royal Naval Reserve and all had refused to take service on board of the Sea King when she was declared to be a Confederate ship of war; and also a statement signed by the master of the Sea King.

These depositions were as follows :—*

Deposition of John Ellison, R.N.V., 18,536.

"I signed as quartermaster in the Sea King on or about the 8th of October, 1864; proceeded to sea; after several days we came off Madeira; on the same night a steamer went into the port of Madeira; on the following morning the Sea King went into the bay, and signalized to the steamers that were laying there, and after two hours the Laurel came out to sea, and signalized to the Sea King, and was answered by hoisting No. 3 pendant, which I hoisted myself. I was ordered by one of the passengers to hoist this pendant; the captain was on the poop at the time, and, turning round, said to me these words, Who ordered that pendant to be hoisted? haul it down immediately; which I did. After this flag was hauled down—about three-quarters of an hour afterwards—the Laurel anchored off what I believe to be the Desertas; the Sea King anchored within about 30 yards of her. The Captain of the Laurel was on the forecastle; our captain said, I will come alongside of you directly, and he did so. In the meantime the men were erecting tackles, rigging purchases to the port main-yardarm, and preventer lifts and rolling tackle ready. After this, commenced to take in large heavy cases from the Laurel, I think four or five, by means of other purchases. Small cases and casks of powder were taken in forward; all lights ordered to be put out. These orders were given by some of the passengers of the Laurel, who had embarked on board the Sea King, and not by our captain. One of these passengers told us that he was the captain, and had charge of the ship, and ordered our captain to hoist the Confederate flag, which was done. Shortly after, our captain gave orders for all hands to lay aft; when the men were aft, our captain came out of the saloon with our articles in his hand, and said, Well, men, I have sold the ship. Immediately, the captain that had charge came out alongside of him. Captain Corbett said to us, This gentleman is offering 4*l.* for able seamen. I was standing close to the captain at the time, and I said to him, I agreed with you in London to go to Bombay, which I have my naval certificate to prove. I told him, You have broken your agreement; why are we not proceeding to Bombay? He said, Well, men, I cannot help it; and, buttoning up his coat, he said, Follow me (and ran to the gangway), I am off. I said, Let him go; this is the ship we have earned our money in, and ought to have it out of. After he had gone, one of the passengers said to me, Why cannot you go in this ship? it is good money. I said I had never earned a shilling in America in my life, and therefore I did not wish to fight for it; that England was my country, and I was not ashamed to own it. He said, Why? I said, You do not know where I belong to; do you see this on my cap? I had the Naval Reserve cap on at the time. If I were to desert from this you could not place any confidence in me; you may try, but it is of no use, I have got the wrong heart in me for this, so you have no need to try me any more. I said to Captain Corbett, I stop in the ship till I get my money down on the capstan-head. He said, Men, I have no money to pay you. I said, You have sold the ship; what have you done with the money? He said, I have no money to pay you here; he said I talked too much. I said, I will see you when I get to England. The other Royal Naval volunteer on board the Sea King told me that Captain Corbett had offered him between 15*l.* and 20*l.* bounty, and about 10*l.* per month, as near as I can recollect; he refused this, and in about half-an-hour all the men went, without being paid, on board the Laurel. The Laurel went to reconnoitre a ship which hove in sight, and came back and signalized that she was a Hamburgh vessel. The Laurel laid off about an hour and a-half, trying to persuade us to join the Sea King, Captain Corbett doing his uttermost to this end. When he found it no use they hoisted the boats and proceeded to Teneriffe, where we arrived on 20th, at night, and were not allowed to land until the 22nd. When the steam was up, ready to depart, the chief officer came forward to the men of the Sea King and said, If anybody asks you where you came from, say you are castaway seamen, and tell the Consul the same, if required.

(Signed) "JOHN ELLISON.

"This deposition was made before me, and read over to the deponent.

(Signed) "HENRY C. GRATTAN, *Consul.*

"*Teneriffe, October* 29, 1864."

Deposition of John Allen, R.N.V., 950.

"I shipped in the Sea King for a voyage to Bombay and China; voyage not to exceed two years. After we got clear of the Channel we stopped the steam and proceeded under double-reefed topsails, dodging along for about three days, as far as I recollect, looking for something. We then made sail and carried on until we came to the island of Madeira, ran in past it at night, then rounded the vessel to, and stood out again till 4 the next morning; then got steam up and stood in for the harbour again. When we got abreast of the harbour we hoisted our number, which was answered by the Laurel steam-boat lying at anchor. Directly altered the ship's head outward, and stood away from the harbour. Then we were followed by the Laurel steamer, which got under weigh directly we signalized her; then we laxed our steam until she came up to us, she then signalized to us when she was going. Immediately we set full steam on and made all sail. We ran for about two hours and a half, when the steamer rounded an island, and we followed her, taking in all sail; and going up under easy steam, brought the ship to an anchor in 17 fathoms. A boat from the little steamer came alongside of us, with the Captain in her, and told our captain that he would be alongside of him in a few minutes. Then we commenced to secure our mainyard and get a pendant from the mast-head, and got the tackle hooked

* Appendix, vol. i, p. 478.

on all ready for taking some heavy weight on board. Then the Laurel came alongside us, and we commenced slinging the cases until about 9 o'clock, likewise cases of powder, which was carried to the after cabin and stowed away; likewise large cases of shell and shot; also cases of rifles, and a great many cases of clothing. About 9 o'clock we went to our suppers. Went to work again about half-past 9, and continued working till about 2 in the morning taking in kegs of powder; all lights ordered to be put out. They gave us a glass of grog and let us go to bed about 2 o'clock next morning. We were not asked to turn to work. After breakfast the hands were all to come aft. When we were all mustered aft, Captain Corbett waited for the person who proved to be the Captain, and took charge of the ship. Then he addressed us in this manner: Men, I have sold the ship; you who like to stop in her, you will get very good wages, and I will give you two months' pay. The men refused to do so. The new Captain spoke to the men and told them he would give them two months' advance, 7*l.* per month, and 10*l.* bounty if any of them would join him. The third engineer and two or three of the firemen joined him. The new captain came to me whilst I was on the poop, it being my watch, and tried all he could to persuade me to go with him; offered me 14*l.* a month to go as gunner's mate, which I told him plainly I dare not do, as I belonged to the English Navy already, and I dare not go into any other. When they found they could not persuade me, they went to Captain Corbett to try if he could not advise me to do so. As I came off the poop, as all hands were standing round the cabin door to see the Captain, the Captain, Captain Corbett, came out of the cabin and called me in, and told me I was very foolish to lose such a good chance. I told him I would not go for double the amount. He said when he went home he would not report me, nor let it be known where I was, if I would go, and I thanked him, and told him I would go home and report myself, and walked out of the cabin. The Captain came on deck and the men asked him to give them three months' wages before they would leave the ship, which he refused to do. He said, there is the steam-boat, and you can come along with me. He told us he would take us to England and discharge us, and if the law would allow us anything he would give it to us. Seeing it was no use hanging on any longer, we put our things on board the steam-boat and waited for the captain; as soon as he came on board the steamer shoved off, got her steam up, and at this time a sail hove in sight, and the captain lowered his boat and went on board the Sea King. Again pulled back as quick as he could, and put to sea, till he made out what the vessel was, and then stood back for the Sea King again to let her know it was all right. We hovered off and on till about 5 or 6 in the evening, as the Captain could not get any of us to join. Some of the little steamer's hands went. Turned away and made our passage towards Teneriffe. On arriving there were not allowed to land until the Laurel was ready for sea with her steam up.

"The above has been read over to me and is correct and true.

(Signed) "JOHN ALLEN, his ⋈ mark.

"This deposition was made before me.

(Signed) "HENRY C. GRATTAN, *Consul.*

"*Teneriffe, October* 29, 1864."

Deposition of Thomas Everall.

"I signed as ordinary seaman in the Sea King, on or about the 8th of October; sailed from London, suppose to be going on a voyage to Bombay, &c., voyage not to exceed two years. When the vessel left there were two persons on board not belonging to the crew; one of these persons went ashore at Deal, the other proceeded on the voyage with us. About ten days after leaving London we hove to before the Island of Madeira, after having been dodging about all night. We signalled to some vessel inside the harbour, and soon after a steamer came out; we accompanied her to an island about 50 miles from Madeira. As soon as we had let go our anchor the other vessel came alongside of us, and we began to tranship guns and ammunition into the Sea King. We worked till late, and when we had done the mate came into the forecastle and told us that the Sea King was sold to the Confederate Government for a privateer, and if we liked to join we should get 4*l.* 10*s.* a month, two months' wages from the Sea King, two months' advance from the Shenandoah (the name given to the Sea King), and 10*l.* bounty. Next morning, after we had finished the transhipment, Captain Corbett called the hands aft and corroborated the mate's statement, further saying that, if we did not like to join he would give us two months' wages and pay our passage to England. We would not agree to this, so he said we must go in the steamer alongside, and we said we would settle it when we got to England. The new Captain of the Sea King then offered us 6*l.* per month and 15*l.* bounty: then afterwards raised his offers to 7*l.* per month and 16*l.* bounty, but only two lads joined. We then took our clothes on board the Laurel, and we left the Shenandoah in the evening; she hoisted the Confederate flag. The passenger who went out with us was the First Lieutenant. We arrived at Teneriffe next Thursday, and landed the Saturday following, and have since been living at the Captain's expense, waiting for the mail-boat to take us home.

"The above has been read over to me, and is correct and true.

(Signed) "THOMAS EVERALL.

"This deposition was made before me.

(Signed) "HENRY C. GRATTAN, *Consul.*

"*Teneriffe, October* 29, 1864."

Deposition of George Kelly.

"The Sea King sailed from London on the above voyage; as soon as she got clear of the Channel the steam was taken off, and some of the sails put her under easy canvas. We said, There is something strange, or the Captain would be more anxious to proceed on his voyage. We had one passenger on board who was afterwards said to be the First Lieutenant. The sailmaker was making a few hammocks for some of the men forward, and this passenger gave him orders to make twelve; from this we supposed

this person was not a passenger. On Monday night or afternoon came off Madeira and dodged off and on until Tuesday morning, then the Captain gave orders to the engineer to put on full steam till he got outside the town. He hoisted signals; they were answered by a steam-boat that was lying inshore; then we kept off again for a couple of hours. The steamer which signalized us came out, and both steamers hoisted signals. We made all steam and sail towards the lee of an island; we anchored there, and the other steamer came alongside of us. The boatswain ordered us to secure the mainyard with a topsail-sheet, and to put tackles for taking in three tons weight. We took in some heavy cases, and also four cases of shot and shell, which we knew to be such, as some tumbled about the decks. There were some gun carriages in cases and some without; the cases containing the gun-carriages were partly open. Several bales of clothing and beds were transhipped. The Captain came to us, and told us he had sold the ship; that the Captain who now had the ship would give us 4*l.* 10*s.* a month and 10*l.* bounty, and he himself would give us two months' wages if we would join the ship. He then raised his terms to 6*l.* and 7*l.*; 16*l.* bounty. We refused to go in her. One engineer, a boy and an ordinary seaman stopped, I believe. The Captain told us to go on board the Laurel; that he would pay our passage home. We went on board. We received no wages. We dodged off and on. The Confederate flag was hoisted after we left the ship. We then came down to Teneriffe.

"The above has been read over to me, and is correct and true.

(Signed) "GEORGE KELLY, his ⋈ mark.

"This deposition was made before me.

(Signed) "HENRY C. GRATTAN, *Consul.*"

The master's statement was as follows:—*

Statement of the Circumstances under which the British Vessel Sea King, Official No. 48,547, *of London, has been Sold by Mr. P. S. Corbett, the Master thereof.*

"The above vessel left London on the 19th of October, 1864, bound to Bombay, calling at port or ports on the passage. The cargo consisted of coals and provisions for the voyage. There were no munitions of war whatever on board. I held a certificate of sale from the owner. On the 19th of October I sold the said ship, receiving the amount agreed upon as per bill of sale. I am not aware that by the said sale I in any way infringed the Foreign Enlistment Act.

(Signed) "P. S. CORBETT.

"This statement was made before me.

(Signed) "HENRY C. GRATTAN, *Consul.*

"*Teneriffe, October* 29, 1864."

The Law Officers of the Crown were forthwith requested to advise the Government as to the course which should be taken in relation to the facts stated in the above Report.

On the 14th November, 1864, the Law Officers reported their opinion as follows:—†

The Law Officers of the Crown to Earl Russell.

"My Lord, "*Lincoln's Inn, November* 14, 1864.

"We are honoured with your Lordship's commands signified in Mr. Layard's letter of the 12th instant, stating that he was directed by your Lordship to transmit to us a copy of a despatch received on the 12th instant from Her Majesty's Consul at Teneriffe, reporting the circumstances under which a number of men had been landed at that port from the British steamer Laurel, and the part taken by that vessel in the equipment at sea of the British steamer Sea King as a vessel of war for the Government of the so-called Confederate States. That Mr. Consul Grattan states that he had taken the depositions on oath of four of the seamen of the Sea King, who were landed from the Laurel, and that he had deemed it proper to send Captain Corbett to England in safe custody to answer a charge of having infringed the Foreign Enlistment Act.

"That your Lordship had ascertained that the depositions had not yet reached the Board of Trade, and that your Lordship was unable, therefore, at present to submit them for our consideration; and Mr. Layard was directed, however, to send us at once the Consul's despatch, as well as a copy of a telegram received at the Board of Trade, announcing the arrival of twenty-two of the men at Liverpool, and to request that we would take these papers into consideration, and furnish your Lordship with our advice as to the course which should be adopted by Her Majesty's Government in this matter.

"We are also honoured with Mr. Layard's letter of this day's date, forwarding the depositions in the case of the Sea King.

"In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

"That we think the depositions taken at Teneriffe, and forwarded to Her Majesty's Government by Mr. Consul Grattan, do not support the conclusion arrived at by the Consul, that Captain Corbett (whom we understand to have been in command of the Sea King until she was handed over to certain agents of the Confederate States off Desertas) is chargeable with any offence against the Foreign Enlistment Act. To constitute an offence under the 7th (the Equipment) Clause of that Act, there must have been an equipment, &c., with a view to employment in the belligerent service of a foreign

* Appendix, vol. i, p. 481. † Ibid., p. 482.

Power, within some part of the United Kingdom, or of Her Majesty's dominions beyond the seas. In like manner, to constitute an offence (by a person not himself enlisting, &c.), under the 2nd Section such person must have been concerned within the United Kingdom, or in some part of Her Majesty's dominions elsewhere, in inducing or procuring others to enlist, &c., or to go, or to agree to go, or embark for some part of Her Majesty's dominions for the purpose or with intent, to be enlisted, &c.; and to constitute an offence under the 6th Section, the master or other person in command of a ship or vessel in some part of the United Kingdom, or of Her Majesty's dominions beyond the seas, must knowingly and willingly have taken, or engaged to take, on board persons who had enlisted, or had agreed, &c., to enlist, &c., or who were departing from Her Majesty's dominions for the purpose and with the intent of enlisting, &c.

"In every one of these cases the criminal act must have been committed within some part of 'Her Majesty's dominions,' a word which, as here used, does not, in our opinion, include a British ship on the high seas. But all the facts mentioned in these depositions appear to have taken place upon the high seas, beyond the limits of Her Majesty's territory. It is, indeed, not improbable that in the preparation of the Sea King for her voyage (if she went to sea under Captain Corbett's command from any port in this country), an offence against the 7th Section of the Act may have been committed. It is also possible that the officers and men, or some of them, may have been hired and taken on board in this country with a view to employment in the Confederate service, so as to constitute offences against the 2nd and 6th Sections, or one of them. But there is no evidence to support either of these conclusions in the depositions taken at Teneriffe by Consul Grattan.

"All, therefore, that we can now advise your Lordship to do is to direct that the twenty-two men, or some of them, who have just landed at Liverpool, be immediately examined by the Solicitor to the Treasury, or some person deputed by him, and their evidence reported to us; and that the Solicitor be directed to obtain such other information as may be accessible in this country with respect to the previous history of the Sea King, the nature and circumstances of her equipment, the engagements of her crew, and the persons concerned therein, if there should be reason to believe that she sailed from this country with the view of being employed as a ship of war in the Confederate service.

"We have, &c.

(Signed) "ROUNDELL PALMER.
"R. P. COLLIER.
"ROBERT PHILLIMORE."

The Lords Commissioners of the Treasury were requested to give immediate directions to their Solicitor, in conformity with the concluding paragraph of the Law Officers' Report.

On the 19th November, 1864, Earl Russell received from Mr. Adams a Note,* submitting for Earl Russell's consideration a copy of a letter from Mr. Dudley relating to the Sea King, together with copies of two depositions made by seamen who had shipped on board of that vessel in the port of London, and who had returned to England from Teneriffe in the mail-steamer Calabar.

These depositions, though containing some statements which were clearly erroneous, confirmed, in general, the truth of those sent to the Foreign Office by Consul Grattan.

With reference to the original hiring, one of the deponents, John Hercus, deposed as follows:—†

"On or about the 25th of September last past, I and John Wilson, a ship's carpenter, were looking for a ship in London, and went on board the steam-ship Sea King, lying in the East India Dock, and spoke to the Chief Mate. He pointed out the Captain, whose name, we were informed, was Corbett, and we spoke to him about going on the ship. He asked us if we were single men, and said he wanted all single men if he could get them. He told me that the ship would be ready in ten days or a fortnight, and if I liked to wait he would give me the chance. He asked the carpenter if he could come to work at once, and he agreed to do so, and went to work the next morning. On or about the 5th of October I went to the Sailors' Home, and there signed articles as able seaman at 2*l.* 10*s.* a-month for a voyage to Bombay, thence to any port or ports in the Indian Ocean, or China Seas, Japan, or Australian Colonies, Pacific or Atlantic Oceans, and back to a port in the United Kingdom, voyage not to exceed two years. I received a note for a month's advance, which I got cashed at Isabella Calder's, No. 6, Bird Street East, London.

"On Friday, the 7th of October, I took my clothes on board, when we were told she was not going until Saturday morning, the 8th."

The other deponent, who was the John Wilson referred to in Hercus's statement, deposed to a like effect as to both the terms and the mode of hiring.

With reference to the persuasions used in order to induce the men to enlist in the service of the Confederate States, the said John Wilson deposed as follows:—‡

"After we had finished taking in the things from the Laurel, the mate came and called all hands aft, and said the captain wanted to see us. We all went and gathered round the cabin doors, and Captain Corbett came out and said, 'Well, men, I have sold the ship to the Confederates; she is to

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* Appendix, vol. i, p. 484. † Ibid., p. 486. ‡ Ibid., p. 488.

belong to their navy to be a cruizer, to burn and destroy merchant-vessels and whalers in particular. She is not to fight, but merely to take prizes, and there will be a first-rate chance for any of you young men who will stop by the vessel, and I should advise you all to do it.' The general reply made by the men was, that we did not want anything to do with her. The new captain then came out of the cabin and asked if we would not join. He was dressed in a grey uniform. Captain Corbett introduced the man when he came out as the American officer who was to have the command of the ship, but did not mention his name; said he would pay the seamen 4*l.* per month, and 10*l.* bounty. One of the engineers, one of the firemen, and two of the seamen consented to join, and took the bounty and signed the articles. The officer in uniform, when he came out to us, announced that the Sea King was now the Shenandoah of the Confederate navy. Liquor had been served among the men during the time we were making the transfer in profusion. Some were under its influence. It was brought round twice after we got through, and offered to the men. They made great efforts to induce the men to join. They raised the wages to 7*l.* and 15*l.* bounty for able seamen. They offered me 16*l.* a-month and 15*l.* bounty. I declined to accept it, or to stop with them on any terms. A bucket of sovereigns was brought out on the deck to tempt the men to join. A portion of the crew of the Laurel joined. The person whom Captain Corbett introduced to us as the commander of the Shenandoah came out on the Laurel; there were a number of others who also came out on the Laurel; I should say about forty. We left them on board the Shenandoah. Some were acting as officers. One of them, pointing at the commander, who was standing on the deck, said he was Captain Semmes."

Hercus deposed to the same effect. Describing the inducements offered to the men, he said :—*

"I said I should not join, but four others said they would. One was a fireman, one an engineer, and two were ordinary seamen. They were under the influence of liquor, which had been supplied freely to all who would take it since we commenced taking in the guns. When they found us unwilling to go the wages and bounty were increased, until we were offered 7*l.* a month and 16*l.* bounty, and to sign the articles for six months. A bucket containing sovereigns was brought on deck, and the officers took up handfuls to tempt the men on deck. The four who consented to go went into the cabin, and I afterwards saw one of them with twenty-eight sovereigns in his hand."

He added :—

"When the American officers who came from the Laurel to the Sea King were trying to persuade us to go in her they said, 'You had better go in the Shenandoah' (which the Sea King was to be called). They promised us the best of living, and said that the best of the provisions would be taken out of the prizes, and all that were then aboard which were no good would be thrown overboard."

It was stated by the deponents that the officers who had gone out in the Sea King, including the captain, returned in the Calabar to England. The only exception was one of the engineers. The statement that Captain Semmes was on board of the Sea King was erroneous.

The copies of depositions sent by Mr. Adams were immediately laid before the Law Officers of the Crown, who, on the 1st December, 1864, advised thereon as follows :—†

The Law Officers of the Crown to Earl Russell.

"My Lord, "*Lincoln's Inn, December* 1, 1864.

"We are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th ultimo, stating that, with reference to our Report of the 15th November, he was directed by your Lordship to transmit to us a letter from Mr. Adams, inclosing copies of the depositions of two men who lately formed part of the crew of the Sea King, and to request that we would take these papers into our consideration, and favour your Lordship with such observations as we might have to offer thereupon.

"Mr. Hammond was also pleased to state that we should observe from the accompanying draft of a letter to the Treasury that the Lords Commissioners have been requested to instruct their Solicitor to take the depositions, and to proceed in this case in other respects in the manner recommended in our Report; and that a despatch of Mr. Consul Grattan was also inclosed.

"In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

"That, in our opinion, the depositions now forwarded by Mr. Adams are sufficient to prove that Captain Corbett did in this country engage and procure the deponents to serve as sailors on board the Sea King, which ship from the whole of the evidence in the case, we infer to have been then a vessel intended by him to be used (after she should have been taken to the Azores) in the Confederate service. These facts raise questions similar to those which were involved in the cases of the seamen on board the Georgia and Rappahannock, except that none of these particular deponents accepted the Confederate service when the true object of the voyage was disclosed to them. Those questions, upon the construction of the Act, are not free from difficulty; but in some of the other cases convictions have been obtained and submitted to; and we think that, even if there were no other point arising upon his acts when he handed over the ship to her Confederate Commander, it would be proper, upon this evidence,

* Appendix, vol. i, p. 487. † Ibid., p. 490.

that Captain Corbett should be prosecuted for a violation of the 2nd section of the Act, by procuring, or attempting to procure, these men, and others unknown, to serve and be employed, &c., or to go and embark from Liverpool for the purpose or with intent to serve or to be employed, &c., contrary to that section.

"We further think, on more deliberate consideration, that if the Sea King ought to be deemed (as *primâ facie* we think she may be) to have been still a British ship when Captain Corbett endeavoured to induce the men on board her to accept the Confederate service, the question whether her deck was not then 'a place belonging or subject to Her Majesty' is a serious one, which ought also to be raised by the indictment. In our former Report we stated that we did not think a British merchant-ship at sea was included within Her Majesty's 'dominions,' in the sense of the Act; but in the 2nd clause there are also the other and larger words above noticed, to which we did not then advert, and which might, perhaps, receive a more extensive construction.

"We have, &c.
(Signed) "ROUNDELL PALMER.
"R. P. COLLIER.
"ROBERT PHILLIMORE."

Proceedings were accordingly directed to be taken against the master of the Sea King. He was arrested in January 1865, brought before a Magistrate, committed for trial, and in November of the same year tried before the Lord Chief Justice and a special jury, on the charge of having, either within the United Kingdom, or on the high seas, enlisted British subjects, or incited them to enlist, in the service of the Confederate States.

The evidence produced at the trial was very conflicting. Several witnesses who had sailed in the ship were examined for the defence. These witnesses contradicted on material points the evidence given in support of the prosecution, and the statements contained in the foregoing depositions, and stated on oath that Corbett took no part in the endeavours made to induce the men to enlist, and that the persuasion used was used solely by the Americans who presented themselves as Confederate officers. The Chief Justice put to the jury the question whether the defendant did, in fact, attempt to enlist the men or procure them to enlist, reserving any questions of law which might be raised on the part of the defence in case the answer should be in the affirmative. The jury returned a verdict of "not guilty."

The first mate of the Sea King, Charles Easman, who was examined for the defence, gave evidence, in the course of his examination, as follows:—

"I was second mate of the Sea King when I sailed in her on her first voyage. I was first mate on her when she was sold to the Confederates. Mr. R. Wright was her owner. She was to go to Bombay and nothing was said as to her ultimate destination. She took in 850 tons of coals. It was an ordinary cargo, and coals at that time paid the best freight. She had forty-five hands the first voyage, and forty-seven the second."

The steward of the ship, John R. Brown, who was also examined for the defence, stated that, when she left London, there was nothing out of the usual course in her stores which might lead to the supposition that she had any other destination than the East Indies.

In cross-examination he said, "Steamers often take cargoes of coal to the East Indies. She had nearly as many coals on board as she could carry It is not an unusual thing to send a power of sale with ships going on a long voyage."

With the view of obtaining further information respecting the Sea King, Mr. Hammond, on the 27th January, 1865, wrote to Messrs. Robertson and Co., of London, who had originally been part-owners and managing owners of the ship. Mr. Hammond's letter and the answer returned by Messrs. Robertson and Co. were respectively as follows:—*

Mr. Hammond to Messrs. Robertson and Co.

"Gentlemen, "*Foreign Office, January* 27, 1865.

"I am directed by Earl Russell to state to you that his Lordship has been informed that the Shenandoah, a full-rigged ship, of 1,100 tons and 250 horse-power, now stated to belong to the Government of the so-called Confederate States, was formerly in the possession of your firm, at which time she bore the name of the Sea King; and I am directed to inquire whether you have any objection to inform his Lordship of the circumstances under which you sold the vessel, and particularly whether she was sold to an agent of the so-called Confederate Government.

"I am, &c.
(Signed) "E. HAMMOND."

* Appendix, vol. i, p. 497

Messrs. Robertson and Co. to Mr. Hammond.

"Sir, "5, *Newman's Court, Cornhill, London, January* 28, 1865.

"We beg to acknowledge receipt of your letter of yesterday, and to inform you that the Sea King was sold by us to a British subject, a Mr. Wright, of Liverpool, through the agency of Messrs. Curry, Kellock, and Co. of Liverpool, brokers, in the usual way, and that the bill of sale, &c., passed through Her Majesty's Customs in due order.

"After the sale of the vessel we had nothing whatever to do with her, and she remained in dock for some weeks, and was entered out for Bombay, which port, we were informed, was to be her destination.

"We are not aware, nor have we any knowledge, that any Confederate agent had anything to do with the ship during her stay in this country.

"The Sea King was only 150 horse-power, and not, as stated in your letter, 250.

"We have, &c.

(Signed) "ROBERTSON AND CO."

On inquiry, it appeared that the Sea King was a screw-steamer built at Glasgow in the year 1863, with a view to employment in the China trade. She was originally owned in shares by several part owners, Messrs. Robertson and Co., of London, acting as managing owners. She sailed from London, in November 1863, for New Zealand and the China Seas, carrying troops for Her Majesty's Government to Auckland, whence she proceeded to Hankow, and returned to London with a cargo of tea. In September 1864 she was sold to a Mr. Richard Wright, a shipowner of Liverpool. Wright, on the 7th October, 1864, granted a certificate of sale to P. S. Corbett, the master of the ship, by which he was empowered to sell her at any port out of the United Kingdom for a price not less than 45,000*l.*, within six months after the date of the certificate. When originally fitted out by Robertson and Co., and when sold by them to Wright, she had on board two ordinary 12-pounder carronades, intended only for use as signal guns and for other uses common in merchant-vessels. These were the two 12-pounder guns hereinafter referred to. The crew of the Sea King signed Articles for a voyage from London to Bombay (calling at any ports or places on the passage) and any other ports or places in India, China, or Japan, or the Pacific, Atlantic or Indian Oceans, trading to and from as legal freights might offer, until the return of the ship to a final port of discharge in the United Kingdom or Continent of Europe, the voyage not to exceed two years.

From what has been stated above, it will have been seen that the Shenandoah was a steam-ship originally named the Sea King, which had been built, not for war but for commercial purposes; that she had been employed in the China trade, and was, at the time when she sailed from the port of London in October 1864, registered in the name of a Liverpool merchant; that she cleared and sailed as for a trading voyage; that her crew were hired and signed Articles for such a voyage, and that they shipped and went to sea without suspecting that she was intended for any other destination; that there was nothing in her cargo, stores or otherwise to excite suspicion; that before or at the time of her arrival in the vicinity of the Madeira Islands she was sold and transferred by her owner to the Government of the Confederate States; that she took on board, whilst at sea, her Commander and officers, all of whom were American citizens, with a small handful of men as a crew; that the officers and crew who had brought her out from London left her, with very few exceptions, and returned to England; that, in order to induce her original crew to take service in her, solicitations and inducements of every kind were employed by her Commander and officers, but without success; that, after being transferred as aforesaid, she was armed for war either on the high seas or in Portuguese waters, and that she thence commenced her cruize, under the name of the Shenandoah, given to her by her new owners.

It will have been seen, also, that no representation had been made to Her Majesty's Government respecting her by Mr. Adams, and that no information about her was ever conveyed to or came into the possession of the Government, previous to the Report received on the 12th November, 1864, from Her Majesty's Consul at Teneriffe.

Lastly, it will have been observed that, immediately on the receipt of that Report, the Government consulted its advisers on the question whether legal proceedings could be instituted against the master of the ship, who had sailed with her from London, for his share in the transaction, and that he was afterwards indicted and brought to trial, but was acquitted by the jury, the evidence as to his acts being doubtful and conflicting.

The steamer Laurel, which conveyed to the Madeira Islands the guns destined for the Shenandoah and her commander and officers, had on the 8th October, 1864, cleared from the port of Liverpool for Matamoras *viâ* Havana and Nassau, and her crew were shipped for that voyage. Her clearance stated that she had a crew of 40 men, no passengers, and

sundry packages of British and foreign goods free of duty. She is believed to have been sold whilst abroad to the Government of the Confederate States.

Mr. Adams subsequently, on the 7th April, 1865, wrote to Earl Russell, inclosing and referring to a letter addressed to Mr. Seward by the Consul of the United States at Rio Janeiro, in which it was stated that several United States' ships had been captured and destroyed by the Shenandoah. In this Note Mr. Adams wrote as follows:—*

"I am by no means insensible to the efforts which have already been made, and are yet making, by Her Majesty's Government to put a stop to such outrages in this kingdom and its dependencies. Neither can I permit myself to doubt the favourable disposition of her Ministers to maintain amicable relations with the Government which I represent.

"Whilst perfectly ready to bear testimony to the promptness with which all the numerous remonstrances and representations which it kas been my painful duty heretofore to submit, have been met and attended to by your Lordship, it is, at the same time, impossible for me to dispute the fact that the hostile policy which it is the object of all this labour to prevent has not only not been checked, but is even now going into execution with more and more complete success."

He proceeded to dwell upon the losses which the commerce and navigation of the United States had sustained, and the circumstances under which these losses had been inflicted, and to observe in effect that such injuries must tend to give rise to "the gravest of complications between any two nations placed under like circumstances." He added:—

"That in this case no such event has followed, has been owing, in the main, to a full conviction that Her Majesty's Government has never been animated by any aggressive disposition towards the United States; but, on the contrary, that it has steadily endeavoured to discountenance, and in a measure to check, the injurious and malevolent operations of many of her subjects. But whilst anxious to do full justice to the amicable intentions of Her Majesty's Ministers, and on that account to forbear from recourse to any but the most friendly and earnest appeals to reason and to their sense of justice for the rectification of these wrongs, it is impossible to resist the conviction that heretofore their measures, however well intended, have never proved effective to remedy the evil complained of. Prompt to acquit them of any design, I am reluctantly compelled to acknowledge the belief that, practically, this evil had its origin in the first step taken, which never can be regarded by my Government in any other light than as precipitate, of acknowledging persons as a belligerent Power on the ocean before they had a single vessel of their own to show floating upon it. The result of that proceeding has been that the Power in question, so far as it can be entitled to the name of a belligerent on the ocean at all, was actually created in consequence of the recognition, and not before; and all that it has subsequently attained of such a position has been through the labour of the subjects of the very country which gave it the shelter of that title in advance. Neither is the whole case stated even now. The results equally show that the ability to continue these operations with success during the whole term of four years that the war has continued, has been exclusively owing to the opportunity to make use of this granted right of a belligerent in the Courts and the ports and harbours of the very Power that furnished the elements of its existence in the outset."

Mr. Adams did not assert that in respect of the departure, equipment, or armament of the Shenandoah there had been any negligence or breach of international duty on the part of Her Majesty's Government; nor could he have done so with any show of reason. The substance of his complaint, as regarded the acts or omissions of the Government, was, that Great Britain had declared herself neutral in the war and had recognized the Confederate States as a belligerent, and that Confederate vessels had been suffered to enter and make use of the ports and harbours of Great Britain and her Colonies, equally with vessels of the United States.

On the 25th January, 1865, the Shenandoah arrived at Port Philip, in the Colony of Victoria, and anchored in Hobson's Bay; and her Commander immediately sent one of the officers of the ship to present the following letter to the Governor of the Colony:—†

Lieutenant Waddell to Governor Sir C. H. Darling.

"*Confederate States' steamer of war Shenandoah,*
"*Port Philip, January* 25, 1865.

"Sir,

"I have the honour to announce to your Excellency the arrival of the Confederate States' steamer Shenandoah, under my command, in Port Philip this afternoon, and also to communicate that the steamer's machinery requires repairs, and that I am in want of coals.

"I desire your Excellency to grant permission that I may make the necessary repairs and supply of coals to enable me to get to sea as quickly as possible.

"I desire also your Excellency's permission to land my prisoners. I shall observe the neutrality.

"I have, &c.

(Signed) "JAS. J. WADDELL."

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* Appendix, vol. i, p. 501.

† Ibid,, p. 500.

The Governor (Sir C. H. Darling) caused the bearer of the letter to be informed that it should be answered on the following day. The Governor had not, at this or any other time, any personal intercourse with the Commander of the Shenandoah.

Commander Waddell's application was, on the 26th January, brought by the Governor before the Executive Council of the Colony for consideration. The advice given by the Council to the Governor thereon is set forth in the subjoined extract from the Minutes of its proceedings:—*

"Despatches from the Right Honourable the Secretary of State, covering the Queen's Proclamation of Neutrality, and all instructions and orders which have, from time to time, been issued by command of Her Majesty, through the Secretary of State, to the Governors of Her Majesty's Colonies and Possessions, for their guidance during the continuance of hostilities on the North American Continent, as well as official correspondence and papers connected with the proceedings of the Confederate steamship Alabama at Her Majesty's Colony of the Cape of Good Hope, are laid before the Council, and read by the Clerk.

"After careful consideration of these instructions and papers, the Council advise that the Honourable the Commissioner of Trade and Customs, writing in the name of his Excellency the Governor, should acquaint the Commander of the Shenandoah—

"1. That the vessel under his command will not be allowed to quit the anchorage in Hobson's Bay within twenty-four hours after any vessel belonging to the Federal States shall have left the port, and further inform him that, in case he should infringe this rule, his Government will be held responsible by that of Great Britain for violating the neutrality of British waters.

"2. That the Commander of the Shenandoah be requested to communicate to the Government of Victoria the nature and extent of the repairs of which he states his vessel to be in need; and that he be informed that permission will be granted for the Shenandoah to remain in the waters of the Colony a sufficient time to receive the provisions or things necessary for the subsistence of her crew—but not beyond what may be necessary for immediate use—and to effect her repairs; and that when the Government of Victoria are in possession of the nature and extent of the supplies and repairs which are necessary, the Commander of the Shenandoah will then be informed of the time which his vessel will be permitted to remain in the waters of the Colony.

"3. That, in reply to that part of his letter which refers to prisoners, the Commander of the Shenandoah be requested to communicate to the Government of Victoria the names of the prisoners, and any other particulars relating to them which he may be willing to supply.

"His Excellency, concurring with the advice which has been tendered to him, directs the Honourable the Commissioner of Trade and Customs to address the Commander of the Shenandoah in the above recited terms.

"The Council further advise his Excellency to authorize a communication being made to the United States' Consul at Melbourne, informing him of the application which has been made by the Commander of the Shenandoah for permission to land prisoners, and stating that the Government are desirous of knowing whether the Consul will undertake to receive and provide for them."

In conformity with the advice of the Council, communications were addressed, by the Governor's direction, to the Commander of the Shenandoah and to the Consul of the United States at Melbourne, Mr. W. Blanchard.

The Consul replied that he had already made provision for the persons brought in as prisoners by the Shenandoah. He addressed several letters to the Governor, protesting against the admission of the vessel into the port of Melbourne, and calling on him to cause her to be seized, as guilty of piracy. The reasons on which the Consul relied were stated by him in the following letter:—†

Mr. Blanchard to Governor Sir C. Darling.

"*Consulate of the United States of America.*

"Sir, "*Melbourne, January* 28, 1865.

"I am in receipt of a communication from C. J. Tyler, Esq., your Excellency's Aide-de-camp, dated to-day, informing me that your Excellency has submitted my despatches of the 26th and 27th January instant to the consideration of your Legal Advisers, and that your Excellency's decision, when made, will be forwarded to me.

"Evidence being daily accumulating in this office in support of the reasons for the protests I had the honour to forward to your Excellency, I now beg leave to call your attention specially to the following:—

"1. That the Sea King *alias* Shenandoah, now in this port, and assuming to be a war-vessel, is a British-built ship, and cleared from a British port as a merchantman, legally entering no port until her arrival here, where she assumes to be a war-vessel of the so-styled Confederate States, that any transfer of said vessel at sea is in violation of the Law of Nations, and does not change her nationality.

"2. That inasmuch as Her Majesty's Neutrality Proclamation prohibits her subjects from supplying or furnishing any war material or ship to either belligerent, this vessel, having an origin as above, is not entitled to the privileges accorded to the belligerents by said Proclamation.

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* Appendix, vol. i, p. 511.

† Ibid., p. 592.

"3. That being a British-built merchant-ship, she cannot be converted into a war-vessel upon the high seas of the so-styled Confederate States, but only by proceeding to and sailing in such character from one of the ports of the so-styled Confederacy.

"4. That it is an established law that vessels are to be considered as under the flag of the nation where built, until legally transferred to another flag.

"5. That said vessel sailed as an English merchant-ship from an English port, and cannot, until legally transferred, be considered as a man-of-war.

"6. That not being legally a man-of-war, she is but a lawless pirate, dishonouring the flag under which her status is to be established, and under which she decoys her victims.

"7. That her armament came also from Great Britain in English vessels (the Laurel and Sea King, now Shenandoah), both of which cleared under British seal, or, if without it, in violation of established law.

"8. That as such she has committed great depredations upon ships belonging to citizens of the United States, making her liable to seizure and detention, and the crew guilty of piracy.

"I cannot close this without further protesting in behalf of my Government against the aid and comfort and refuge now being extended to the so-styled Confederate cruizer Shenandoah in this port.

"I have, &c.
(Signed) "WM. BLANCHARD."

The propositions asserted by the Consul, that the Shenandoah, having been built as a merchant-ship in Great Britain, and having sailed as such from a British port, could not subsequently acquire the character of a belligerent ship of war, unless she had in the interval proceeded to, and sailed from, a port of the Confederate States, and that she was in the view of international law a pirate, were erroneous.

In answer to the Consul's letter above set forth, the following letter was addressed to him by order of the Governor:—*

Mr. Tyler to Mr. Blanchard.

"Sir, "*Private Secretary's Office, Melbourne, January* 30, 1865.

"I am directed by his Excellency the Governor to acknowledge the receipt of your letter of the 28th instant, and to acquaint you that, having fully considered the representations contained in that communication and in your previous letters of the 26th and 27th instant, and advised with the Crown Law Officers thereon, his Excellency has come to the decision that, whatever may be the previous history of the Shenandoah, the Government of this Colony is bound to treat her as a ship of war belonging to a belligerent Power.

"I have, &c.
"(For Private Secretary),
(Signed) "C. J. TYLER."

The subjoined extracts from Minutes of the proceedings of the Executive Council of the Colony show what subsequently occurred in relation to the Shenandoah and the course pursued with reference to her by the Government of the Colony:—†

Extract from the Minutes of the Council.—Minute 65/7 *of the Proceedings on the* 30*th of January,* 1865.

"At the close of the ordinary business of the Council, the Honourable the Commissioner of Trade and Customs submits to his Excellency a communication from the commander of the Shenandoah, dated 28th January, 1865—in reply to the letter which was addressed to him on the 26th instant—in which Lieutenant Waddell states that he has not been able up to the present time to inform the Government of the extent of the repairs which are required to be made to his vessel, and expressing his fear that the damages will prove to be more serious than he had anticipated; but that as soon as a diver, whom he has employed for the purpose, has been able to inspect the screw-shaft below water, he will lose no time in communicating with them. This letter was, shortly afterwards, followed by another from Messrs. Langlands, Brothers, and Co., of the Port Philip Foundry, and dated the 30th January, addressed to Lieutenant Waddell, which that officer endorsed, as forwarded to the Honourable the Commissioner of Trade and Customs, for the information of the Governor, and with a request that it might be returned.

"In this letter Messrs. Langlands report that it was absolutely necessary to put the vessel on the Government slip, as, after inspection by the diver, he reports the lining of the outer stern bush to be entirely gone, and requires to be replaced, and that, as three days more will elapse before the vessel can be slipped, Messrs. Langlands state they will not be able to accomplish the repairs within ten days from the date of their letter.

"After considering these letters, the Council advise his Excellency to authorize another communication to be addressed to the Commander of the Shenandoah, drawing his attention to the circumstance that he had not as yet replied to the request for information as to the nature of the supplies of

* Appendix, vol. i, p. 593. † Ibid., p. 514.

which he states he is in need for the subsistence of his crew, nor had he furnished the list of the prisoners on board; and that he be further informed that the Governor had appointed a Board of practical men to examine the Shenandoah, and report whether that vessel is in a fit state to proceed to sea, or whether any, or if any, what repairs are necessary. For this purpose his Excellency appoints Mr. C. B. Payne, Secretary Naval Survey Board; Mr. Douglas Elder, Superintendent Marine Yard; and Mr. Alexander Wilson, Government Engineer, to be a Board to proceed on board the Shenandoah, and report accordingly.

"His Excellency then lays before the Council three letters which have been addressed to him by the United States' Consul at Melbourne, dated respectively the 26th, 27th, and 28th of January, 1865, protesting against the rights of a belligerent being granted to the Shenandoah, and further protesting against the aid and comfort and refuge now being extended to that vessel.

"Having referred these letters to his legal advisers, his Excellency received from them the following opinion:—

"'We have the honour to acknowledge the receipt of three letters addressed to his Excellency the Governor by the Consul of the United States of America, dated respectively the 26th, 27th, and 28th instant.

"'We are of opinion that there is no evidence of any act of piracy committed by any person on board the vessel called the Shenandoah. This vessel purports to be, and we think she should be treated as, a ship of war belonging to a belligerent Power.'

(Signed) "'ARCHD. MICHIE,
"'GEO. HIGINBOTHAM,
"'*Crown Law Officers.*

"'*January* 30, 1865.'

"His Excellency states that he had replied to the United States' Consul to the effect that, having given an attentive consideration to his letters, and having consulted with the Law Officers of the Crown, he had come to the decision that the Government of this Colony were bound to treat the Shenandoah as a ship of war belonging to a belligerent Power.

"His Excellency then consults the Council on the only point upon which he thought any doubt could arise, viz., whether it would be expedient to call upon the Lieutenant commanding the Shenandoah to show his commission from the Government of the Confederate States, authorizing him to take command of that vessel for warlike purposes.

"After brief consultation a majority of his advisers tender their opinion that it would not be expedient to do so."

Extract from the Minutes of the Council.—Minute 65/8 *of the Proceedings on the* 6*th February,* 1865.*

"On concluding the ordinary business of the day his Excellency informs the Council that since their last meeting a communication had been received from the Commander of the Shenandoah, dated 30th January, stating that the immediate supplies required for the officers and crew under his command, consisted of fresh meat, vegetables, and bread daily, and certain sea supplies which are enumerated; and that with respect to the list of prisoners, all the persons—whom on the high seas he considered to be his prisoners—had left his ship in shore boats without his knowledge soon after his arrival in the port. The Honourable Commissioner of Trade and Customs had been authorized to reply to Lieutenant Waddell, that permission was granted to him to ship, in reasonable quantities, the provisions and supplies which he had enumerated, and that it was necessary for him to place his Paymaster in communication with the Collector of Customs, as to the quantities and particulars in detail. The request formerly made to Lieutenant Waddell, to furnish the numbers and particulars of his prisoners, was also renewed in this communication, and he was informed that, although the number in this instance was understood to be small, yet this case might form a precedent for future guidance in any other case where it might be desired to land a larger number of prisoners, in violation of municipal or other laws or regulations in force in this colony.

"To this letter Lieutenant Waddell replied on the 1st February, that the number of the prisoners he had brought into the port were eleven, two being females; that they were captured serving in the American barque Delphine, which vessel he destroyed; and on arrival in this port they left the Shenandoah of their own free will—without consulting the regulations enforced in this colony—unmolested, unassisted, and not in any boat belonging to the ship. He further added that he was extremely anxious to get the Shenandoah to sea.

"The Report of the Board of Survey, on the repairs required by the Shenandoah, is than laid before the Council and read.

"On receiving this Report, his Excellency states that he had directed another letter to be addressed to Lieutenant Waddell, informing him that, as it was evidently necessary from the Report that his vessel should be placed on the slip, it was presumed that he would proceed promptly with the necessary arrangements; and it was further pointed out to him that the slip—which Messrs. Langlands, in their communication, had termed the Government Slip—was not in the possession or under the control of the Government; that it was originally built by the Government, but had for many years been leased to various parties, and therefore Lieutenant Waddell's arrangements must be made with the present lessees.

"The Commissioner of Trade and Customs then acquainted his Excellency that he had issued instructions to the principal officers in Hobson's Bay to furnish daily reports of the Shenandoah, in

* Appendix, vol. i, p. 516.

Part VIII.

The Shenandoah.

obedience to a Minute of his Excellency of the 3rd instant; and that he had enjoined upon these officers the necessity of performing this service without unseemly obtrusion or interference; but that any apparent abuse of the permission to make repairs or to take in supplies was to be reported; and their attention was especially directed to the concluding paragraph of the Minute, relating to any extension of the armament of the Shenandoah, or to any attempt to render her present armament more effective.

"Mr. Francis further states, that an application had been made this day to the Collector of Customs for permission to land certain surplus stores, accompanied by a declaration that none of these stores had been captured, but that they all came into the possession of Lieutenant Waddell with the vessel. On consultation with the Council, his Excellency directs this application to be referred far the opinion of the Crown Law Officers, whether such a permission should be granted, and whether the 44th section of the Act 21 Vict., No. 13, is applicable to the case.

"His Excellency then directs Mr. Francis to address another letter to Lieutenant Waddell, and inform him that, as his vessel has been twelve days in the port already, with permission to lay in provisions and to effect necessary repairs, it is now desired that he should name the day upon which he will be prepared to proceed to sea; and that, after carefully considering the position of Great Britain as strictly neutral in the present contest on the North American Continent, the Government of Victoria cannot grant him the use of any appliances which are the property of the Government, nor can it render any assistance, either directly or indirectly, towards effecting the repairs of his vessel."

The Report of the Board of Survey referred to in the foregoing Minute was as follows:—*

Report of Survey held on board the Confederate Screw-Steamer Shenandoah.

"*Melbourne, February* 1, 1865.

"We, the Undersigned, in pursuance of instructions received from his Excellency the Governor, proceeded on board the Confederate screw-steamer Shenandoah this morning at 10 A.M. for the purpose of examining her, with the view of reporting whether that vessel is now in a fit state to proceed to sea, or whether and what repairs are necessary, have the honour to report—

"1st. That the Shenandoah is not in a fit state to proceed to sea as a steam-ship.

"2nd. That repairs are necessary.

"3rd. That the part or parts requiring repair being the inner stern-post bearing of the screw-shaft, the extent of damage cannot be ascertained without the vessel being slipped.

(Signed) "CHARLES B. PAYNE.
"ALEX. WILSON, *Engineer-Surveyor.*
"DOUGLAS ELDER, *Superintendent of Marine Yard.*"

The Governor's Minute (or Memorandum) of the 3rd February, referred to in the foregoing Minute of Proceedings, was as follows:—†

"*Memorandum for the Commissioner of Trade and Customs.*

"I have to request the Honourable the Commissioner of Trade and Customs will be so good as to make arrangements for obtaining daily reports of the progress of the repairs and provisioning of the Shenandoah, and communicate the information obtained to me.

"I am sure that the Honourable Commissioner will take every precaution in his power against the possibility of the Commander of that vessel in any degree extending its armament, or rendering the present armament more effective.

"C. H. D.

"*Toorak, February* 3, 1865."

On the 10th February, 1865, the Consul wrote to the Governor,‡ inclosing a deposition on oath by one John Williams, who had been a prisoner on board the Shenandoah, and had escaped from her by swimming ashore on the 6th February. In this deposition the said John Williams stated that fifteen or twenty men had joined the ship since her arrival in port, and were concealed in various parts of her, and that three others, who were wearing the ship's uniform, had also come aboard since her arrival.

The course pursued by the Colonial Government with reference to this and other matters relating to the Shenandoah is stated in the subjoined further extract from the Minutes of the Executive Council:—§

Extract from the Minutes of the Council.—Minute 65/9 *of the Proceedings on the* 13*th February,* 1865.

"His Excellency states that Lieutenant Waddell had replied to the communication, which it had been agreed to address him at their last meeting, that he could not name a day for proceeding to sea,

* Appendix, vol. i, p. 518. † Ibid., p. 529. ‡ Ibid. p. 606. § Ibid., p. 520.

until his ship is taken on the slip, when the amount of the repairs which may be necessary could be ascertained, and the time estimated in which they could be effected. He further states that the recent gales had prevented him from lightening the ship to the necessary draught, preparatory to placing her on the slip, but that he hoped to do so on the following morning.

"The opinion of the Attorney-General on the application which has been made for permission to land certain surplus stores from the Shenandoah is also laid before the Council.

"It is to the effect that the permission cannot be granted by the Government of Victoria, consistently with a strict observance of the rules prescribed for the maintenance of neutrality; and his Excellency informs the Council that he has authorized a communication to the Commander of the Shenandoah to that effect.

"The further Report of the Board of Survey on the Shenandoah, after viewing that vessel on the slip, is also submitted and considered.

"His Excellency then states to the Council that, in consequence of a letter which he had received from the United States' Consul, dated the 10th instant and inclosing a testimony on oath of one John Williams, he had deemed it his duty to refer it for the consideration of the Law Officers of the Crown; as, presuming the statements therein contained to be correct, it would appear that the Commander of the Shenandoah was taking advantage of the aid and comfort which had been afforded to him in this port, to increase the number of his crew by enlisting British subjects, in contravention of the Foreign Enlistment Act.

"In consequence of this reference the Law Officers of the Crown had directed the attendance of the man John Williams, and that he had, with other men, attended that morning at the Crown Law Offices, and had made statements to the effect that a number of men representing themselves to be Englishmen had gone on board the Shenandoah since her arrival in this port, with the intention of joining her, and were now concealed on board.

"The Law Officers being of opinion that there was sufficient evidence to take steps for prosecuting, had instructed the police to lay informations against these men for a misdemeanour, and to apply for a warrant for their apprehension.

"On consultation with the Council, it was not considered necessary by his Excellency to take any further steps in the matter until the result of the police-office proceedings were known; but Mr. Francis is instructed again to inquire, by letter, when Lieutenant Waddell would be ready to proceed to sea.

"A Report from the detective police at Sandridge, of this day's date, on matters relating to the Shenandoah, is laid upon the table of the Council; and as, from information which had reached the Government, some suspicion had been attached to the movements of a vessel called the Eli Whitney, now lying in the bay, the Honourable the Commissioner of Trades and Customs undertakes that her movements shall be carefully watched.

"The Honourable the Attorney-General then submits to his Excellency depositions taken on oath by eleven persons before the Consul of the United States in Melbourne, which depositions have been placed in his hands by the Consul.

"A true extract.

(Signed) "J. H. KAY, *Clerk of the Council.*"

The opinion of the Attorney-General of the Colony, referred to in the foregoing Minute, was as follows:— *

"Section 44 of Act No. 13 is not applicable, in my opinion, to this case. Even if the Shenandoah be regarded as a ship having a commission from a foreign State within the meaning of the section, the section does not authorize the master of such a ship to land goods without submitting to the rules of the Customs, but imposes a penalty on him for not delivering an account, in writing, of the quality and quantity of goods, &c., on board. The account is not stated to have been delivered, and if it had been, the master is not empowered to land the goods, although the Customs officers have the right to do so, subject to the regulations in force respecting Her Majesty's ships.

"I am not aware that there is anything in the Customs Act that would make the relaxation of the Customs regulations now asked for absolutely illegal. But I am of opinion that the permission that is sought cannot be granted consistently with a strict observance of the rules prescribed for the maintenance of neutrality.

(Signed) "GEO. HIGINBOTHAM.

"*Crown Law Offices, February* 6, 1865."

The further Report of the Board of Survey, also referred to in the foregoing Minute, was as follows:—†

Further Report on the Confederate steam-ship Shenandoah.

"The Shenandoah having been hauled up on the patent slip at Williamstown, we, the Undersigned, proceeded to hold a survey on the damage sustained to the forward bearing of the outer length of the screw-shaft, and find as follows, viz.:—

"1st. The lignum vitæ staves, forming the bearing for the forward end of the outer length of the screw-shaft, are entirely displaced.

"2nd. That the inner stern-post bracket, in which the staves of lignum vitæ are fitted, forming

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* Appendix, vol. i, p. 521.

† Ibid., p. 522.

also the support for the foremost end of the screw-frame, is fractured on the starboard side to the extent of about four inches.

"3rd. That these repairs (necessary to render the steam-ship seaworthy) can be effected in or about five clear working days from this date.

(Signed) "CHARLES B. PAYNE, *Late Lieutenant, R.N.*
"ALEX. WILSON, *Engineer Surveyor.*
"DOUGLAS ELDER, *Superintendent, Marine Yard.*

"*Williamstown, February* 10, 1865."

On the same 13th of February a warrant was granted by a magistrate at Williamstown for the apprehension of a man known as James Davidson, or "Charley," who was stated to be concealed on board the Shenandoah. The Superintendent of Police, who was charged with the execution of the warrant, went on board the ship, but was not permitted to search her, and was unable to apprehend the man of whom he was in quest. The Superintendent reported as follows to the Chief Commissioner of Police :—*

Superintendent Lyttleton to the Chief Commissioner of Police, Melbourne.

"*Police Department, Superintendent's Office,*
"*Melbourne, February* 14, 1865.

"Sir,

"I have the honour to inform you that, acting on your instructions, I proceeded last evening to the Confederate war-steamer Shenandoah, with a warrant for the arrest of a man known as Charley, stated to have illegally engaged himself on board the vessel. I asked for Captain Waddell, but was informed that he was not on board. I then asked for the officer in charge, saw him, and obtained permission to go on board. I told the officer my business, and requested that he would allow me to see the men on board, in order that I might execute my warrant. He refused to allow me. He then showed me the ship's articles, and asked me to point out the name of the man, which I was unable to do. I showed him my warrant, which he looked over, and returning it to me he said, That is all right, but you shall not go over the ship. He told me I had better return when the captain was on board; but as he could not say at what hour he would probably return, I told him that I would see the captain the following day.

"This morning I went again to the Shenandoah, and, after stating my business, was allowed on board. I told Captain Waddell that I was informed he had persons on board who had joined his vessel here, and that, informations having been sworn to that effect, I had a warrant with me. He said, I pledge you my word of honour as an officer and a gentleman that I have not any one on board, nor have I engaged any one, nor will I while I am here. I said I understood that the persons I wanted were wearing the uniform of the Confederate States, and were working on board. This he distinctly denied. He offered to show me the ship's articles, but I declined, and told him that I had seen them last evening. I then asked him to allow me to go over the ship, and see if the men I wanted were on board. This he refused to do. I said I must try to execute my warrant, even if I had to use force. He said he would use force to resist me, and that, if he was overcome, he would throw up his ship to the Government here, and go home and report the matter to his Government. He said that he dare not allow me to search his ship; 'it was more than his commission was worth; and that such a thing would not be attempted by the Government to a ship of war of any other country.' He said 'it was only by courtesy that I was allowed on board,' and that he considered 'a great slight had been put upon him by sending me to the ship with a warrant.' He said he thought that his 'word should have been taken in preference to that of men who had probably deserted from the ship, and had been put up to annoy him by the American Consul.' He said that if I took one man I might come afterwards and take fifteen or twenty, and that the American Consul would perhaps lay an information against him as being a 'buccaneer or pirate.' He said he thought that he had been 'very badly treated here by the police refusing to assist him in arresting his deserters.' Before leaving, I asked him again if he refused to allow me to look for the man for whom I had a warrant in my hand. He replied yes, that he did refuse, and that he would 'fight his ship rather than allow it.' I then left.

"I am, &c.

(Signed) "THOMAS LYTTLETON, *Superintendent.*"

This Report was on the same 14th February laid by the Governor before the Executive Council for consideration, as appears by the subjoined further extract from the Minutes of the Council :—*

Extract from the Minutes of the Council.—Minute 65/10 *of the Proceedings on the* 14*th February,* 1865.

"The Council are specially summoned to consider a Report from Police Superintendent Lyttleton, to whom had been entrusted the warrant mentioned in yesterday's proceedings, for the arrest of a British subject known as 'Charley,' who was stated on oath to have illegally enlisted himself on board the Confederate ship Shenandoah.

"The Report is read to the Council.

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* Appendix, vol. i, p. 524.

"His Excellency then draws the attention of his advisers to the gravity of the present state of affairs, as respects the Confederate steam-ship Shenandoah; and points out that as the ordinary course of the law has been frustrated by William Waddell refusing to allow the execution of a warrant issued upon a sworn information, it becomes necessary to consider what steps should now be taken to enforce the maintenance of neutrality.

"After full consideration of the instructions issued by Her Majesty's Government for the observance of neutrality, and some discussion upon the question of the right of the Government to enforce the execution of the warrant, the Council advise his Excellency to direct the Honourable the Commissioner of Trade and Customs to write to Lieutenant Waddell, and request that officer to reconsider his expressed determination to resist by force the execution of the warrant; and further, to inform him that, pending his reply, the permission which has been granted to him to repair and take in supplies has been suspended by the Governor.

"His Excellency then issues a direction under his own hand that, upon the receipt of an instruction to that effect from the Chief Commissioner of Police, none of Her Majesty's subjects in this Colony are to render any aid or assistance to, or perform any work in respect to the so-called Confederate steam-ship Shenandoah, or in launching the same.

"His Excellency further directs that the Chief Commissioner of Police be instructed to send some police to Williamstown, to take care that the direction above mentioned is duly observed by Her Majesty's subjects; and that the officer in charge of this force be strictly enjoined to prevent any collision between the police and the officers and men of the Shenandoah; and that no obstruction in any manner whatever is to be offered to their movements."

In pursuance of the advice of the Council, the following letter was on the same 14th February, 1865, addressed to the Commander of the Shenandoah by the Governor's direction:—*

"Sir, "*Custom-House, Melbourne, February* 14, 1865.

"I am directed by his Excellency the Governor to state that it has been reported to the Government that you have refused to allow the execution on board the Shenandoah of a warrant issued upon the sworn information according to law, alleging that a British subject is on board that vessel, who has entered the service of the Confederate States in violation of the British statute known as the Foreign Enlistment Act; that it is not consistent with the British law to accept any contrary declaration of facts, whatever respect be due to the person, from which it proceeds as sufficient to justify the non-execution of such warrant; and that, moreover, it is conceived that this Government has a right to expect that those who are receiving in our port the aid and assistance which they claim as a belligerent under the Queen's Proclamation should not in any way oppose proceedings intended to enforce the maintenance of neutrality.

"It will be apparent to you that the execution of the warrant is necessary, in order to enable the Government to bring to justice those upon whose depositions the warrant was issued, if the statements in those depositions should prove false in fact.

"In this view you are appealed to, to reconsider your determination, and pending further information from you, which you are requested to make with as little delay as possible, the permission granted to you to repair and take in supplies is suspended, and Her Majesty's subjects have been duly warned accordingly.

"I have, &c.
(Signed) "Jas. G. Francis.

"J. J. Waddell, Esq.,
"Lieutenant Commanding Confederate States' steamer Shenandoah."

To this letter the following reply was received:—†

"Sir, "*Confederate States' steamer Shenandoah, February* 14, 1865.

"I am in the receipt of your letter of this date, in which you inform me that you have been directed by his Excellency the Governor to state that it has been reported to the Government that I have refused to allow the execution on board the Shenandoah of a warrant issued upon sworn information, according to law, alleging that a British subject is on board this vessel who has entered the service of the Confederate States, in violation of the British statute known as the Foreign Enlistment Act; and that it is not consistent with the British law to accept any contrary relation of facts, whatever respect be due to the person from whom it proceeds, as sufficient to justify the non-execution of such warrant. I am then appealed to to reconsider my determination, and the letter concludes by informing me that, pending a further intimation from me, the permission granted to repair and take supplies is suspended.

"I have to inform his Excellency the Governor that the execution of the warrant was not refused, as no such person as the one therein specified was on board, but permission to search the ship was refused. According to all the laws of nations, the deck of a vessel of war is considered to represent the majesty of the country whose flag she flies, and she is free from all executions, except for crimes actually committed on shore, when a demand must be made for the delivery of such person, and the execution of the warrant performed by the police of the ship. Our shipping articles have been shown to the Superintendent of Police. All strangers have been sent out of the ship, and two commissioned officers were ordered to search if any such have been left on board. They have reported to me that,

* Appendix, vol. i, p. 643.

† Ibid., p. 644.

after making a thorough search, they can find no person on board except those who entered this port as part of the complement of men.

"I, therefore, as commander of the ship, representing my Government in British waters, have to inform his Excellency that there are no persons on board this ship except those whose names are on my shipping articles, and that no one has been enlisted in the service of the Confederate States since my arrival in this port, nor have I in any way violated the neutrality of the port.

"And I, in the name of the Government of the Confederate States of America, hereby enter my solemn protest against any obstruction which may cause the detention of this ship in this port.

"I have, &c.

(Signed) "JAS. J. WADDELL,

"*Lieutenant Commanding, Confederate States' Navy.*

'To the Hon. Jas. G. Francis,

"Commissioner of Trade and Customs, Melbourne."

Late in the evening of the same day (14th February) four men, who had been on board the Shenandoah, were apprehended by the police under the circumstances stated in the subjoined Report:—

*Superintendent Lyttleton to the Chief Commissioner of Police, Melbourne.**

"I have the honour to inform you that, acting on your instructions, I proceeded yesterday, at 4 P.M., to Williamstown, and took possession of the slip on which the Confederate vessel Shenandoah is placed. I cleared the yard, and would not allow any workmen to go on board the ship. At about 10 o'clock P.M., four men left the Shenandoah in a boat, pulled by two watermen. They were followed by the Water Police, who were unable to come up with them until they got to the railway station. They were then requested to come back and see me. I questioned them, and they told me that they had been on board a few days unknown to the Captain; and that as soon as he found they were on board, he ordered them to go on shore. I have detained these men in custody, and have written to the American Consul, requesting him to forward some one who may be able to identify them. The tug-steamers came at 4 A.M. this morning to tow the Shenandoah off. I ordered them off, and requested Captain Ferguson not to supply the ship with a pilot. I am still in charge of the slip.

"I have, &c.

(Signed) "J. LYTTLETON."

The four persons so apprehended were on the 16th February taken before a Magistrate, and charged with having violated the Foreign Enlistment Act by enlisting, or attempting to enlist, in the Confederate service. One was discharged, being an American; the three others—one of whom was identified as being the man known as James Davidson or C arley—were committed for trial.

On the 15th February, the lessee of the slip on which the Shenandoah was being repaired wrote to the Chief Secretary of the Colony, stating that his manager had informed him that, should a gale of wind arise, he (the manager) would either be compelled to launch the ship, or run a great risk of her sustaining serious damage in consequence of her unsafe position on the cradle.†

This communication was laid before the Executive Council; and the Governor, by the advice of the Council, determined that the order by which the permission to repair had been suspended should be revoked, and the vessel allowed to complete her necessary repairs, her Commander being at the same time told, that he was expected to use every dispatch in getting to sea by the time previously fixed.‡

A communication to this effect was accordingly made to Commander Waddell, who, in acknowledging it, reiterated his previous denials in the following terms:—§

"The four men alluded to in your communication are no part of this vessel's complement of men; they were detected on board by the ship's police after all strangers were reported out of the vessel, and they were ordered and seen out of the vessel by the ship's police immediately on their discovery, which was after my letter had been dispatched informing his Excellency the Governor that there were no such persons on board. These men were here without my knowledge, and I have no doubt can be properly called stowaways, and such they would have remained but for the vigilance of the ship's police, inasmuch as they were detected after the third search, but in no way can I be accused, in truth, of being cognizant of an evasion of the Foreign Enlistment Act."

The Shenandoah quitted Port Philip on the morning of the 18th February, 1865.

On the 18th February,‖ after the ship had sailed, the Consul of the United States sent to the Governor a declaration on oath purporting to be made by a man named Forbes.

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* Appendix, vol. i, p. 527. † Ibid., p. 528. ‡ Ibid., p. 526.
§ Ibid., p. 646. ‖ Ibid., p. 616.

The declaration was to the effect that, about 4 P.M. on the 17th February, Forbes had seen on the pier at Sandridge five men (most, if not all, of whom were stated by him to be British subjects) and that one of these told him that they and others were going on board a barque called the Maria Ross, then lying in the Bay, and were to join the Shenandoah when she was out at sea, and that boats from the Maria Ross were to come for them at 5 o'clock. The Consul stated that Forbes had come to his (the Consul's) office, with this intelligence at about 5 P.M., and had been taken by him immediately to the office of the Crown Solicitor, with the view of laying an information; but that the Crown Solicitor had refused to take the information, whereby an endeavour to prevent a violation of the neutrality of the port had been defeated. The Consul inclosed also a statement by a Mr. Lord, who had accompanied him to the Crown Solicitor. This statement, after giving an account of the interview, proceeded as follows:—*

"We left and went first to the office of the Chief Commissioner of Police, and not finding either him or Mr. Lyttleton in, we drove to the Houses of Parliament, and on sending your name to the Attorney-General he at once came out and asked us into the side room; he patiently listened to all you had to say, and then suggested that, if you would place the matter in the shape of an affidavit, he would lay it before his colleagues; that a verbal statement was not sufficient for the Government to proceed upon. We then left and drove to the office of the detective police, and saw Mr. Nicholson, the Chief, who heard the man's statement in full, but as he could not act without a warrant, advised us to go to the Police Magistrate, Mr. Sturt, and get a warrant; then he would at once act upon it. Leaving there, we went to the residence of Mr. Sturt, in Spencer Street, who received you very politely, listened to what you had to say, examined the man, but stated that he could not take the responsibility of granting a warrant on the evidence of this man alone, and advised your going to Williamstown to Mr. Call, who, perhaps, would be in possession of corroborative testimony through the water police. We then left, it being about half-past 7, and you, finding such a disinclination in any one to act in the matter, decided to take the deposition yourself and send it to the Attorney-General, leaving it to the Government to take such action on it as it might deem proper. Going to your Consulate the deposition was taken, and a copy inclosed to the Attorney-General, with a request for me to deliver it.

"I took it to the Houses of Parliament, which I found closed, and it being then late, about 9, I decided it was too late to stop the shipment of the men, as we understood the vessel was to leave at 5, and I went home and returned the letter to you on Saturday morning. Previous to going home, however, I again went to the detective office, saw Mr. Nicholson, told him how you had been prevented from getting the evidence before the Government in the shape they required it. He expressed his regret but could not act in so important a matter without a warrant."

The Consul complained that the language and manner of the Crown Solicitor, in refusing to take the information, had been insulting to him.

The Consul's letter was answered as follows:—*

Mr. Warde to Mr. Blanchard.

"Sir, "*February* 21, 1865.

"I am desired by his Excellency the Governor to acquaint you that he received your letter of the 18th instant in the afternoon of that day, Saturday, and that on Monday, the 20th, he caused it to be referred, through the Honourable the Attorney-General, to the Crown Solicitor for any explanation he might wish to offer.

"2. After stating that it was only in consequence of his accidentally returning to his office at half-past 5 P.M., after it had been closed for the day, that the interview between you and himself occurred at all, Mr. Garner states that he informed you that, not being a magistrate, he could not take an information, and adds that he was in a hurry to save a railway train, and therefore left more suddenly than he otherwise should have done; but he positively asserts that neither in manner nor language did he insult you.

"3. His Excellency feels sure that the Crown Solicitor's tone and manner have been misapprehended, and confidently assures you that there was no intention on the part of that officer to fail in the respect due to your position as the Consul of the United States of America.

"I have, &c.

(Signed) "N. L. WARDE, *Private Secretary.*"

From circumstances which were discovered after the sailing of the Shenandoah, there was reason to believe that a number of men had gone secretly on board of that vessel during the night of the 17th February, and that they went to sea in her and became part of her crew.

The Governor reported this fact to Her Majesty's Government, and at the same time sent to the Governors of the other Australian Colonies, and to the Governor of New Zealand, letters in the following terms:—†

* Appendix, vol. i, p. 618. † Ibid, p. 565

Governor Sir C. Darling to Governors of Australian Colonies and New Zealand.

"Sir, "*Government House, Melbourne, February* 27, 1865.

"I consider it my duty to place your Excellency in possession of the accompanying correspondence and other documents connected with the proceedings of the Commander of the Confederate States' vessel Shenandoah, while lying in Hobson's Bay, for the purpose of having necessary repairs effected and taking in supplies, under permission granted by me in accordance with the conditions prescribed by Her Majesty's Proclamation and instructions for the observance of neutrality.

"2. I have also the honour to forward copies of letters from the Chief Commissioner of Police in Victoria, accompanied by reports and statements which leave no doubt that the neutrality has been flagrantly violated by the Commander of the Shenandoah, who, after having assured me of his intention to respect it, and pleaded the privilege of a belligerent ship of war to prevent the execution of warrants under the Foreign Enlistment Act, nevertheless received on board his vessel, before he left the port on the 18th instant, a considerable number of men destined to augment the ship's company.

"3. I have thought it right to communicate to your Excellency this information, in the event of Lieutenant Waddell or any of his officers hereafter claiming the privileges of a belligerent in any port of the Colony under your Government.

"I have, &c.
(Signed) "C. H. DARLING."

The three persons who had been committed for trial on the charge of having taken service or agreed to enlist on board the Shenandoah were brought to trial on the 17th March, 1865, at the Criminal Sessions of the Supreme Court of the Colony of Victoria. One was found guilty by the jury, and another pleaded guilty, and these two were sentenced to ten days' imprisonment.*

The Judge, in pronouncing sentence, took notice that the men had already been imprisoned for more than a month, and that persons in their condition of life might not and probably did not know the important results which might follow from such an unlawful act as they had committed. It was right and necessary, however, that the law should be vindicated. The third of the accused persons (a boy of about 15 years of age) was discharged in consideration of his youth, on the application of the Attorney-General.

It may be here mentioned that in March 1864, six men had been brought to trial at Cork on a charge of having agreed to enlist on board the United States' war-steamer Kearsarge. They pleaded guilty, and were discharged without punishment, on the ground that they were probably unacquainted with the law, and ignorant of the criminality of the act which they had committed. It was stated, and is believed by Her Majesty's Government to be true, that they had come on board without the sanction or knowledge of the Captain of the Kearsarge, who ordered them to be put ashore when he subsequently touched at Queenstown.

The Governor of Victoria, in reporting to Her Majesty's Government the circumstances which had occurred during the time that the Shenandoah remained within the waters of that Colony, requested that he might be furnished with specific instructions as to the right of the Colonial Government to execute a warrant under the Foreign Enlistment Act on board a belligerent ship of war, whether belonging to a State with which Her Majesty had diplomatic relations, or to a community situate as the Confederate States were; and, if the right should be considered to exist, he requested to be informed to what extent the Government would be justified in proceeding for the purpose of enforcing the execution of such a warrant. The Governor's inquiry was referred to the Law Officers of the Crown in England, and they advised as follows:—†

The Law Officers of the Crown to Earl Russell.

"My Lord, "*Lincoln's Inn, April* 21, 1865.

"We are honoured with your Lordship's commands signified in Mr. Murray's letter of the 18th instant, stating that he was directed by your Lordship to transmit to us a letter from the Colonial Office, inclosing copies of despatches from Governor Sir C. Darling, together with their several inclosures, relative to the visit to the port of Melbourne of the Confederate States' steamer Shenandoah, and the alleged enlistment of British subjects there to serve on board that vessel; and to request that we would take these papers into our consideration, and favour your Lordship with any observations we might have to offer thereupon, and more particularly as to whether they seem to require any action on the part of Her Majesty's Government.

"In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

"That it appears to us that, in the circumstances stated, his Excellency the Governor acted with

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* Appendix, vol. i, p. 577. † Ibid., p. 558.

propriety and discretion; and there does not appear to us at present to be a necessity for any action on the part of Her Majesty's Government.

"With respect to his Excellency's request, that he may receive instructions as to the propriety of executing any warrant under the Foreign Enlistment Act on board a Confederate (public) ship of war, we are of opinion that, in a case of strong suspicion, he ought to request the permission of the Commander of the ship to execute the warrant; and that, if this request be refused, he ought not to attempt to enforce the execution; but that, in this case, the Commander should be desired to leave the port as speedily as possible, and should be informed that he will not be re-admitted into it.

"We have, &c.

(Signed) "ROUNDELL PALMER.
"R. P. COLLIER.
"ROBERT PHILLIMORE."

Whilst the Shenandoah was in Hobson's Bay the following report on her construction, equipment, and warlike force, was made to the Governor by a competent officer who had served as a lieutenant in Her Majesty's Navy:—*

Captain Payne to Colonel Henderson.

"Sir, "*Melbourne, February* 10, 1865.

"With reference to your Memorandum, marked Confidential, directing me to report upon the armament, speed, and other qualities of the Confederate war-steamer Shenandoah, I have the honour to inform you that I have taken every opportunity that presented itself for obtaining the information you desire, and beg now to report,—

"1st. That the armament (as far as I can see) consists of the following ordnance, viz.:—Two Whitworth rifle guns of 33 cwt. each. Four 8-inch smooth-bore guns, 55 cwt. each. Two 12-pounder smooth-bore guns, about 15 cwt. each.

"I have been unable to ascertain what amount of ammunition she has on board for these guns, nor have I been able to determine where her magazines are placed. I do not think they are abaft her engine-room, for her after-hold has been cleared, and there is no appearance of any magazine there. I observe that there were no small-arms, stands for small-arms, cutlasses or pistols, about any part of her decks; and as far as I could see, there appears to be a general unreadiness for action about her quarters. Shot-racks were not fitted, nor did I see any place I call the shell-room aloft; everything indicated that she was nothing more than an ordinary merchant-ship.

"I have used every exertion (but without success) to ascertain whether she has any larger guns stowed away below. I do not think she has, as her scantling would hardly allow her to carry more than I have already seen. There appears to be a mystery about her forehold, for the foreman of the patent slip, when asked to go down to that spot to measure her for the cradle, was informed he could not get to the skin at that place. The hatches were always kept on, and the foreman states that he was informed they had all their 'stuff' there.

"As to her speed, I have been informed by competent judges that, taking her boiler power into consideration, she would not exceed an average of ten knots an hour under steam alone; whilst under sail she has every appearance of being very fast. There is nothing to protect her machines from shot and shell; in fact, her boilers and the principal parts of her machinery are above the water-line. Her bunkers certainly are between the machinery and the ship's side, but from their small dimensions they would offer but small resistance to shot. The most vulnerable part, viz., the boilers, is left quite unprotected. She can carry a great quantity of coals, but in her bunkers she can only stow about 50 tons. Her daily consumption under full steam averages about 24 tons. She is fitted with a smoke-consuming apparatus, which appears to answer well, for I remarked when she first came up the bay but little smoke was emitted from her funnel. In her other qualities, I think she corresponds with the description given in 'Lloyd's Register' of another vessel which has a similar number and the same tonnage marked on her main beam, viz., No. 4,854 and 790 tons. She is built on the composite plan, having iron frames with wood planking, and appears to have been strongly built, but not more so than is usual for ships classed on the first letter for thirteen years.

"The state of the vessel on deck, aloft, and in the engine-room, I think both slovenly and dirty, and does not reflect any credit upon her officers.

"There appeared to me to be about forty to fifty men on board, slouchy, dirty, and undisciplined. I noticed also a great number of officers, and could not help remarking that the number appeared out of all proportion to the few men I saw on board. Without disparaging the Confederate war-steamer Shenandoah, I am altogether of of opinion that there is nothing in her build, armament (with the exception of the Whitworth guns), and equipment that should call for more special notice than that she is an ordinary merchant-vessel, armed with a few guns.

"I have, &c.

(Signed) "CHARLES B. PAYNE."

The Consul of the United States at Melbourne had, on the Shenandoah's first arrival in the port, sent to Mr. Adams, in a letter dated 26th January, 1865, the following

* Appendix, vol. i, p. 557.

The Shenandoah.

description of her, communicated to him (the Consul) by persons who had been on board of her as prisoners :—*

"She has the appearance of an ordinary merchant-ship, with a long full poop, a large bright wheel-house, oval skylights on the poop. She has one telescope funnel. The mizen topmast and top-gallant staysail both hoist from the mainmast head. She is wire-rigged.

"The officers declare it would not be safe to fire a broadside. It is the general impression that she is not a formidable vessel. She is leaky, and requires two hours' pumping out. The crew consists of seventy-nine, all told."

Her armament was stated by these persons to consist of "two unrifled 8-inch shot guns, two rifled 4-inch guns, and two ordinary 12-pounders, the original ship's guns."

By several persons who had been board of her, as prisoners or among her crew, it was sworn that only the two ordinary 12-pounder guns were used during her cruize in making prizes. By this was meant (as appears from the depositions themselves) that these guns were used in firing blank shots, to compel merchant-vessels to heave to. They do not appear to have been used in any other manner.

With respect to her crew it was sworn by one of the prisoners that he had heard her Captain say that he and his officers took charge of her at the Madeira Islands, and sailed thence with a crew of seventeen men. Another deponent (one Silvester, a seaman who had joined her from the Laurel and left her at Melbourne) stated on oath that, when she was left by the Laurel, her whole crew, including officers, numbered twenty-three persons. When she arrived at the port of Melbourne she had captured nine or more United States' merchant-ships, and her crew was largely increased by the addition of men who had joined her from those ships. Several men who had so joined her, and who left her at Melbourne, affirmed that they had been forced to take service in her against their will by threats and ill-usage.

On the 20th June, 1865, Earl Russell received the following letter from Mr. Mason, who had been residing in England during the war as an Agent of the Government of the Confederate States, though not officially recognized as such by Her Majesty's Government.

Mr. Mason to Earl Russell.†

"My Lord, "28, *Grove Street, Leamington, June* 20, 1865.

"It being considered important and right, in the present condition of the Confederate States of America, to arrest further hostile proceedings at sea in the war against the United States, those having authority to do so in Europe desire as speedy as practicable to communicate with the Shenandoah, the only remaining Confederate ship in commission, in order to terminate her cruize.

"Having no means of doing this in the distant seas where that ship is presumed now to be, I venture to inquire of your Lordship whether it will be agreeable to the Government of Her Majesty to allow this to be done through the British Consuls at ports where the ship may be expected.

"I have the honour to inclose herewith a copy of the order it is proposed to transmit, and will be obliged if your Lordship will cause me to be informed whether, upon sending such orders unsealed to the Foreign Office they can be sent through the proper channels to the Consuls, or other representatives of Her Majesty at the points indicated, to be by them transmitted, when opportunity admits, to the officer in command of the Shenandoah. These points are Nagasaki in Japan, Shanghae, and the Sandwich Islands.

"I trust that your Lordship will, from the exigency of the occasion, pardon the liberty I have ventured to take, and will oblige me by having the inclosed copy returned to me.

"I have, &c.

(Signed) "J. M. MASON."

Inclosed in this letter was a paper signed "James D. Bullock," giving an account of the downfall of the Confederate Government and the cessation of the Civil War, and purporting to direct the Commander of the Shenandoah "to desist from any further destruction of United States' property upon the high seas, and from all offensive operations against the citizens of that country."

Mr. Mason was told, in reply, that Earl Russell "has no objection to sending this letter to the places mentioned, and also to Her Majesty's Colonial and Naval authorities, it being always distinctly understood that the Shenandoah will be dealt with in the Courts, if claimed, according to law."

Copies of the letter were sent accordingly to the Commander-in-chief of Her Majesty's ships on the China and Pacific Stations, and to Her Majesty's officers commanding on other naval stations, except the Mediterranean.

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* Appendix, vol. i, p. 589. † Ibid., p. 653.

Reports having subsequently reached Her Majesty's Government from Washington, that the Shenandoah continued to capture and destroy United States' vessels after her Commander had received information that the war was at an end, it was ordered that instructions should be sent to Commanders of Her Majesty's ships of war, and to Governors of Colonies, that she should be seized, if found upon the high seas equipped for war; and if in a Colonial port, should be forcibly detained. It was further ordered, that, if so seized or detained, being equipped as a vessel of war, she should be delivered to the nearest authority of the United States, in a port or harbour of that country, or to an officer commanding a United States' vessel of war on the high seas.*

It was afterwards positively affirmed by the Commander of the Shenandoah, that, although up to the 28th June, 1865, he had continued to cruize and to make prizes, being then in the Arctic Sea and without news of what had occurred in America, he had, on receiving intelligence of the downfall of the Government by which he was commissioned, "desisted instantly from further acts of war," and shaped his course for the Atlantic Ocean.

On the 6th November, 1865, the Shenandoah arrived at Liverpool.† She was immediately placed under detention by the officers of Customs; and a party of men from Her Majesty's ship Donegal was put on board of her, to prevent her leaving the port. The gun-boat Goshawk was also lashed alongside of her, with orders that she should not be allowed to hoist anchor, nor to light her fires, nor hoist out any property that might be considered as belonging to the Government of the United States. On the Inspector-General of Customs going aboard of the ship, her Commander stated that she had come into port with the intention of delivering her up to Her Majesty's Government; and he, on the same day, wrote and sent to Her Majesty's Secretary of State for Foreign Affairs a letter which concluded as follows:—‡

"As to the ship's disposal, I do not consider that I have any right to destroy her, or any further right to command her. On the contrary, I think that as all the property of Government has reverted, by the fortune of war, to the Government of the United States of America, that therefore this vessel, inasmuch as it was the property of the Confederate States, should accompany the other property already reverted. I therefore sought this port as a suitable one wherein to 'learn the news,' and, if I am without a Government, to surrender the ship with her battery, small arms, machinery, stores, tackle, and apparel complete to Her Majesty's Government for such disposition as in its wisdom should be deemed proper."

Captain Waddell, in this letter, stated that the Shenandoah had been a ship of war under his command belonging to the Confederate States, and that he had commissioned her in October 1864 under orders from the Naval Department of the Confederate States, and had cruized in her in pursuance of his orders.

Mr. Adams, on being informed of the arrival of the Shenandoah at Liverpool, wrote as follows to the Earl of Clarendon, then Her Majesty's Secretary of State for Foreign Affairs:—§

Mr. Adams to Earl of Clarendon.

"My Lord, "*Legation of the United States, London, November* 7, 1865.

"I have the honour to submit to your consideration the copy of a letter received by me from the Vice-Consul of the United States at Liverpool, touching the arrival, yesterday, of the vessel known as the Shenandoah at that port.

"Although necessarily without special instructions respecting this case, I do not hesitate to assume the responsibility of respectfully requesting Her Majesty's Government to take possession of the said vessel with a view to deliver it into the hands of my Government, in order that it may be properly secured against any renewal of the audacious and lawless proceedings which have hitherto distinguished its career.

"I perceive by the terms of the Vice-Consul's letter that some of the chronometers saved from the vessels which have fallen a prey to this corsair are stated to be now on board. I pray your Lordship that proper measures may be taken to secure them in such manner that they may be returned on claim of the owners to whom they justly belong.

"Inasmuch as the ravages of this vessel appear to have been continued long after she ceased to have a belligerent character, even in the eyes of Her Majesty's Government, it may become a question in what light the persons on board and engaged in them are to be viewed before the law. The fact that several of them are British subjects is quite certain. Whilst I do not feel myself prepared at this moment, under imperfect information, to suggest the adoption of any course in regard to them, I trust I may venture to hope that Her Majesty's Government will be induced, voluntarily, to adopt that which

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* Appendix, vol. i, p. 657. † Ibid., p. 662 ‡ Ibid., p. 667. § Ibid., p. 669.

may most satisfy my countrymen, who have been such severe sufferers, of its disposition to do everything in its power to mark its high sense of the flagrant nature of their offences.

"I pray, &c.

(Signed) "CHARLES FRANCIS ADAMS."

This letter, with other communications relating to the Shenandoah and her officers and crew, having been referred to the Law Officers of the Crown, they, on the same day (7th November, 1865), advised as follows:—*

"In obedience to your Lordship's commands, we have taken these papers into our consideration, and have the honour to report—

"That we think it will be proper for Her Majesty's Government, in compliance with Mr. Adams's request to deliver up to him, on behalf of the Government of the United States, the ship in question, with her tackle, apparel, &c., and all captured chronometers or other property capable of being identified as prize of war, which may be found on board her.

"With respect to the officers and crew, we observe that Mr. Adams does not demand their surrender to the United States' Government, and that the only question suggested by him is, whether they or any of them ought to be proceeded against, under the direction of Her Majesty's Government, for some offence or offences cognizable by British law. The only offence at which he distinctly points is that of violating the Foreign Enlistment Act, by taking part in hostilities on board of this ship: and, as to this, we think it would be proper if some of these men are, as he says, British subjects (by which we understand him to mean natural-born British subjects, for none others are within those provisions of the Act which relate to enlistment or acts of war out of this country), and if evidence can be obtained of that fact, to direct proceedings to be taken against those persons, under the 2nd section of the Foreign Enlistment Act, 59 Geo. III, cap. 69, before they have become dispersed, so as to escape from justice. If the facts stated by Captain Waddell are true, there is clearly no case for any prosecution, on the ground of piracy, in the Courts of this country; and we presume that Her Majesty's Government are not in possession of any evidence which could be produced before any Court or Magistrate for the purpose of contravening the statement or of showing that the crime of piracy has, in fact, been committed.

"We conceive that the substance of the foregoing observations may properly be embodied in the reply to be given to Mr. Adams, and we think it may not be amiss to add that, of course, Mr. Adams and his Government must be well aware that any proceedings in this country against persons in the situation of the crew of the Shenandoah (as against all others) must be founded upon some definite charge, of an offence cognizable by our laws and supported by proper legal evidence; and that Her Majesty's Government are not at present in a position to say whether such a charge, supported by such evidence, can or cannot be brought against any of the persons in question.

"With respect to any of the persons on board the Shenandoah who cannot be immediately proceeded against and detained, under legal warrant, upon any criminal charge, we are not aware of any ground on which they can properly be prevented from going on shore and disposing of themselves as they may think fit; and we cannot advise Her Majesty's Government to assume or exercise the power of keeping them under any kind of restraint.

"We have, &c.

(Signed) "ROUNDELL PALMER.
"R. P. COLLIER.
"ROBERT PHILLIMORE."

On a subsequent reference, upon the following day; they again stated their opinion as follows:—†

"With respect to the question whether the officers and crew of the Shenandoah may now be permitted to leave the ship, and to go on shore, we have only to repeat the opinion expressed in our Report of yesterday's date, namely, that these persons being now in this country, and entitled to the benefit of our laws, cannot be detained except under legal warrant upon some criminal charge duly preferred against them in the ordinary course of law. If Her Majesty's Government are now in possession, or consider it probable that, if an information were laid before a magistrate, they would shortly be in possession of evidence against any of these persons sufficient to justify their committal for trial, either upon any charge of misdemeanour under the Foreign Enlistment Act or upon the graver charge of piracy, we think it would be right and proper to take the necessary proceedings without delay, in order to have such charge duly investigated; but, at the present time, we are not informed of any such evidence in the possession or power of Her Majesty's Government by which such a charge would be likely to be established,

"We have, &c.

(Signed) "ROUNDELL PALMER.
"R. P. COLLIER.
"ROBERT PHILLIMORE."

Instructions were thereupon sent to Captain Paynter, commanding Her Majesty's

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* Appendix, vol. i, p. 670.

† Ibid., p. 673.

ship Donegal, who was in charge of the Shenandoah, that those of her officers and men who were not ascertained to be British subjects, either by their own admission or by the evidence of persons who knew them, should be allowed to quit the vessel with their personal effects. As to those who should be ascertained to be British subjects, inquiry was to be made whether evidence on oath could be obtained against them. Those against whom evidence could be obtained were to be detained and taken before a magistrate, the rest discharged.*

Captain Paynter reported, on the 8th November, that, on receiving these instructions he had gone on board the Shenandoah, and had ascertained that the crew were all shipped on the high seas. "I mustered the crew, and was fully satisfied that they were foreigners, and that there were none known to be British-born subjects on board; they were therefore all landed with their effects."†

Captain Paynter subsequently stated that his conclusion was formed partly on the assurances given him on board by the late Commander and officers of the ship, and partly by the answers returned by the men when mustered and questioned, one by one, on their general appearance, and on the absence of any evidence against them. He added that any men who were British subjects, and had formed part of her original crew, might have found means to make their escape whilst she was in the Mersey.‡

On this subject the following Report was made by the Lieutenant commanding the Goshawk:—§

Lieutenant Cheek to Captain Paynter.

"Sir, "*Goshawk, Rock Ferry, January* 26, 1866.

"In compliance with your order calling on me to report the proceedings on board the Shenandoah during her detention at this port by the British authorities, I have the honour to inform you that, agreeably to instructions, dated 6th November, 1865, I proceeded in Her Majesty's gun-boat Goshawk, under my command, and lashed her alongside the vessel.

"In the evening Captain Waddell informed me that, the vessel having been taken charge of by the Custom-house authorities, he considered himself, the officers, and crew relieved from all further charge and responsibity of the ship, and that his authority over the crew would also end.

"The following day (November 7) the crew requested that I would allow them to land, none of them having been on shore for more than nine months. I told them that under the circumstances it was not in my power to grant it, and persuaded them to remain quiet for a day or two, till orders could be received from London.

"They then demanded to see my authority for detaining them. I explained that I acted under orders from you. They replied that you could have no charge of them without instructions from Earl Russell, the Foreign Office, or the American Minister, as they were American subjects.

"This evening, as on the previous one, I succeeded in pacifying the crew by reasoning with them.

"On the following morning (8th November) the crew were getting riotous, and determined to remain on board no longer. Eight or ten had already deserted. I, therefore, in a letter to you, explained the excited state the crew were in, and that I had heard from one or two of their officers their determination to leave the vessel that evening at all risks. I should, therefore, be compelled to let them escape, or else detain them by force.

"The answer I received from you was, that I was to act up to your orders, and the crew were to remain on board, but that you hoped soon to have instructions from London.

"I would call your attention to the excited state of the crew by their conduct in attempting to desert, many of them jumping on board the steamer and trying to conceal themselves when you came to muster and examine them; on which occasion I accompanied you into the cabin and heard you question Captain Waddell as to whether he believed any of his crew to be British subjects: he replied in the negative, and stated that he had shipped them all at sea.

"On your questioning the officers, they also made the same statement.

"The First Lieutenant mustered the crew from a book of his own, the only list found on board, and you stopped and questioned the men as they passed before you.

"Each one stated that he belonged to one or other of the States of America.

"The personal baggage of the officers and crew was examined by the Custom-house officers to prevent any American property being taken on shore.

"On the evening of the 9th November you again came on board the Shenandoah, and met the American Consul in the cabin of a tug he had hired to bring him alongside; he then promised to send an officer to take charge of her, as a captured Confederate cruizer, on behalf of the American Government.

"On the 10th November, Captain Freeman came on board and took charge, under orders from the American Consul, and, in compliance with your memorandum, I handed the vessel and stores over to him.

"On my leaving the Shenandoah, Captain Freeman hoisted the American ensign and pendant, and proclaimed her a man-of-war.

"During the time I was on board I received no information, nor could I obtain any evidence, that

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* Appendix, vol. i, p. 676. † Ibid., p. 678. ‡ Ibid., p. 682. § Ibid., p. 712.

any of the crew were British subjects; had I done so I should have arrested them, and immediately communicated with you for further instructions.

"I have, &c.
(Signed) "ALF. CHEEK."

In order to justify the detention of any of the crew it was, by law, necessary to prove by evidence that the persons detained were natural-born British subjects. To allege that they were probably such would not have been sufficient, nor could they have been called upon to prove that they were not such. No evidence tending to prove the British nationality of any of the Shenandoah's crew was furnished or offered to, or was in the possession of, Her Majesty's Government or its officers before or at the time when the crew landed and dispersed. A deposition made by one Temple or Jones, a native of Madras, who stated that he had himself enlisted in the ship, and served in her throughout her cruize, was, on the 28th December—about seven weeks after the dispersion of the crew—sent to the Earl of Clarendon by Mr. Adams. It was clearly shown, however, that Temple was a person unworthy of credit, and some of the statements in his deposition were ascertained to be gross falsehoods. The crew of the Shenandoah, if Temple's evidence were to be believed, included Americans, Prussians, Spaniards, Portuguese, Danes, Malays, and Sandwich Islanders. About fifty men were stated by him to have joined her from United States' ships.

On the 10th November, 1865, the Shenandoah was delivered to, and accepted by, the Consul of the United States, and she soon afterwards sailed for New York.

Summary.

The Shenandoah was a steam-ship built, not for war, but for commercial purposes, and constructed with a view to employment in the China trade. She had been employed by her original owners in a trading voyage to New Zealand and China, and was, when she sailed from the port of London in October, 1864, registered in the name of a Liverpool merchant as sole owner.

She was not, within the jurisdiction of Her Britannic Majesty's Government, fitted out, armed, or equipped for war, in any manner or degree, nor in any manner or degree specially adapted, for warlike use. She appeared to be, and was in fact, by her construction, fittings, and in all other respects, at the time when she departed from the waters of the United Kingdom, an ordinary merchant-steamer, and not a ship-of-war. She had on board, at the time when she was owned and used as a trading vessel, two 12-pounder carronades such as are usually carried by vessels of her class for making signals; and these guns passed with the rest of the ship's furniture, when she was sold by her original owners, and remained on board when she sailed in October 1864. They were guns suitable for use in a merchant-vessel, and not for use in a ship of war. She cleared and sailed from the port of London as for an ordinary trading voyage, under her original name of the Sea King, by which she was known as a trading vessel. In her stores, and in the coals which she carried as cargo, as well as in her build and equipment, there was, as Her Majesty's Government believes, nothing that was calculated to excite, or did excite, in the minds of persons on board of her any suspicion that she was intended for a different purpose.

Her crew was composed of men who had shipped on board of her in the ordinary way, in the port of London, for a trading voyage. They were hired and signed Articles for a voyage from London to Bombay (calling at any ports or places on the passage), and any other ports or places in India, China, or Japan, or the Pacific, Atlantic, or Indian Oceans, trading to and from as legal freights might offer, until the return of the ship to a final port of discharge in the United Kingdom or Continent of Europe; the voyage not to exceed two years.

Before or at the time of her arrival at the Madeira Islands, she was sold by her owner to the Government of the Confederate States. Either on the high seas or in Portuguese waters she was transferred to an officer commissioned by the Government of the Confederate States, who then took possession and control of her; and the master, officers, and crew who had come out in her from England (three or four men only excepted) left her at that time, and returned to England. The three or four men who remained on board the ship were one of the engineers, a common sailor, and one or two firemen. They are stated to have enlisted when under the influence of liquor.

The Commander who had taken poseession of the ship and his officers (who, like him, were Americans) employed the strongest inducements in order to persuade the ship's crew to enlist, by the offer of large bounties, by the promise of high wages and prize-money, by exhibiting money to them, and by lavish supplies of liquor. These inducements, however, were used in vain, except in the case of the three or four men above mentioned.

The ship was also joined by a few men who had come in the steamer Laurel. At the time when she commenced cruising, her whole crew, exclusive of officers, was from seventeen to nineteen men. The number of men who would commonly be shipped to work a vessel of her size as a merchant-ship would be from forty to fifty, which was the number that actually went out in her. As a ship of war she would require a larger number than that. It appears that before she arrived at the port of Melbourne her crew had been increased to a complement of from seventy to eighty men, exclusive of officers (who were about twenty) by the addition of men who joined her from captured American vessels.

The Commander and officers of the Shenandoah (excepting, as some deponents stated, one of the lieutenants, who had taken a passage in her from London as an ordinary passenger, concealing his purpose and official character) came on board of her, for the first time, after she had arrived near to a detached group of islands belonging to the Madeiras, and called the Desertas. They came out as passengers in the Laurel steamer, which cleared on the 8th October from Liverpool for a voyage to Matamoras *viâ* Havannah and Nassau. They took the control of the ship, and, by their orders, her guns (other than the two small 12-pounders above mentioned) and all her ammunition were put on board of her from the Laurel. These acts were done either within Portuguese waters or on the high seas. The vessel afterwards hoisted the Confederate flag and commenced cruising. Her Commander was a Lieutenant-Commander in the naval service of the Confederate States, appointed by the Naval Department of that Government to command the Shenandoah.

Of the vessels captured by the Shenandoah a considerable number were captured before she arrived at a British colony.

The earliest intelligence respecting the Shenandoah which reached Her Majesty's Government was received from Her Britannic Majesty's Consul at Teneriffe. Up to that time (that is, until the 12th November, 1864, five weeks after she left London) no representation respecting her had been made by Mr. Adams, and no information about her had been conveyed to or come into the possession of Her Majesty's Government.

Immediately on the receipt of the British Consul's Report, and before any representation had been made or information furnished by the Minister of the United States, Her Majesty's Government took the opinion of its legal advisers on the question whether legal proceedings could be instituted against Corbett, the master of the ship, for his share in the transaction, and the master was, in fact, indicted and brought to trial, but was acquitted by the jury, the evidence as to his acts being doubtful and conflicting.

The Commander of the Shenandoah on arriving in the port of Melbourne addressed to the Governor an application in writing, stating that she was a steamer belonging to the Confederate States, and asking for permission to make necessary repairs and obtain necessary supplies of coal. Permission was granted to him to remain in the waters of the colony a sufficient time for receiving the provisions and things necessary for the subsistence of the ship's crew, and for effecting needful repairs. The Commissioner of Trade and Customs for the colony was at the same time instructed to take every precaution in his power against the possibility that her Commander might attempt to augment her armament in any degree, or to render the armament which she possessed more effective. The officers of the Government were directed to attend to this, and to furnish daily reports of the progress made with the repairs and provisioning of the ship. Competent persons were appointed to ascertain whether repairs were really necessary and to report to the Governor on the subject, and these persons reported that she was not in a fit state to go to sea, and that repairs were necessary for which the vessel would have to be placed on a slip. The slip, though the property of the Colonial Government, was not under its control, but under that of a private person to whom it had been leased by the Government.

Permission to land from the vessel stores which she did not require for use was asked, but refused by the Governor, on the advice of his Law Officers.

The Commander of the ship was required to fix the earliest day on which she would be ready to sail, and to take his departure on the day so fixed; and she departed accordingly.

Three persons discovered to have gone on board the ship for the purpose of joining her crew were prosecuted and brought to trial. Two were punished, the third released without punishment by reason of his youth. A fourth was discharged, being found to

The Shenandoah.

be an American. These were the only persons who could be ascertained, before she left Melbourne, to have joined or attempted to join her; and her Commander gave his word in writing, as commander of the ship, that there were no persons on board of her except those whose names were on his Shipping Articles, that no one had been enlisted in the service of the Confederate States since his arrival, and that he had in no way violated the neutrality of the port.

It was not the duty of the Colonial Government to seize or forcibly search the Shenandoah whilst in the waters of the colony, nor could it have done so without transgressing the rules of neutrality and the settled practice of nations.

No personal communication took place between the Governor and the commander of the ship while she remained in the waters of the colony.

The discovery having afterwards been made that, notwithstanding the vigilance exercised by the officers of the Colonial Government, persons had been secretly put on board the ship during the night preceding her departure, notice of this was sent by the Governor to the Governors of the other Australian colonies and of New Zealand.

Her Britannic Majesty having subsequently received reports, which appeared to be worthy of credit, to the effect that the Shenandoah was continuing to capture and destroy merchant-vessels after her commander had been informed of the cessation of the civil war, gave directions that she should be seized in any port of Her Majesty's Colonial possessions, or on the high seas, and should be delivered over to officers of the United States. But the truth of these reports was positively denied by her commander on his arrival at Liverpool, and Her Majesty's Government has no reason to believe that the denial was untrue.

On arriving at Liverpool the vessel was secured by the officers of the Government, and was handed over to the Government of the United States, on the express request of Mr. Adams.

The crew were detained on board for some days by the officers of the Government. No evidence being within that time given, offered, or discovered against any of them, they were at the end of it suffered to land and disperse. More than six months had at this time elapsed since the end of the civil war.

The Shenandoah was at sea during more than twelve months, from the time at which her cruize began. She was never, so far as Her Majesty's Government is aware, encountered or chased by a United States' ship of war, and no endeavour to intercept or capture her appears to have been made by the Government of the United States.

Her Britannic Majesty's Government denies that, in respect of the Shenandoah, there was on its part any failure of international duty for which reparation is due from Great Britain to the United States.

PART IX.

Recapitulation of Facts previously stated.

The statements of fact which have been placed before the Arbitrators may be recapitulated as follows.

Of the four vessels in respect of which alone the United States have, up to this time, made claims against Great Britain, two—the Georgia and Shenandoah—were never, in any manner or degree, within the dominions of Her Majesty, fitted out, armed, or equipped for war, or specially adapted to warlike use. They were constructed and fitted in a manner suitable to merchant-ships. One of them—the Shenandoah—was not only built for a merchant-ship, but had been owned and used as such before she was purchased by the Government of the Confederate States; and her condition and equipment when she departed from Great Britain and when she came into the possession of the Government of the Confederate States, were, so far as appears, the same in all material respects as they had been when she was owned and employed as a trading vessel. This vessel, according to the evidence which has been brought to the knowledge of Her Majesty's Government, was sold and transferred to the Government of the Confederate States after she had departed from Her Majesty's dominions.

No information whatever respecting these two vessels respectively was conveyed to Her Britannic Majesty's Government by the Minister or Consular Officers of the United States, or came to the knowledge of that Government, until they had respectively departed from Her Majesty's dominions. Her Britannic Majesty's Government had no ground to believe or suspect that they or either of them were or was intended to be delivered to the Government of the Confederate States or its officers, or employed in cruizing or carrying on war against the United States. If the Minister or Consuls of the United States had any such grounds of belief or suspicion, they were not communicated to the Government of Her Britannic Majesty.

The other two vessels—the Alabama and Florida—though suitable, by their construction, for vessels of war, were not armed for war when they respectively departed from the waters of the United Kingdom. They had then no armament whatever, and they did not receive any until after they had arrived at places very remote from Great Britain, and out of the control of Her Majesty's Government.

As to one of these two—the Florida—no information supported by evidence proving, or tending to prove, that she was intended to cruize or carry on war against the United States, was conveyed to or received by Her Britannic Majesty's Government previously to her departure from the United Kingdom. On her first arrival in a British Colony this vessel was seized under the authority of the Governor, but was released, for want of proof, by the Decree of a Court of competent jurisdiction.

The Florida, before engaging in any operation of war, entered a port of the Confederate States. She remained there for more than four months; she there enlisted and shipped a crew, and was put in suitable condition for cruizing, and she was from thence sent out to cruize.

In the case of one vessel only—the Alabama—admissible evidence tending to prove the existence of an unlawful intention was furnished to Her Britannic Majesty's Government before the departure of the ship. This evidence was supplied little by little, the last instalment of it being delivered on the fourth day before her departure. She put to sea unregistered and without a clearance, under the pretence that she was about to make a trial trip and return to her moorings. The circumstances under which the evidence relating to this vessel was received, referred to the Legal Advisers of the Government, and by them considered and reported on, are stated in Part VI of this Case.

All the information furnished by Mr. Adams to Her Majesty's Government, as well in relation to the Alabama as in relation to each of the three other vessels hereinbefore specified, was referred by the Secretary of State for Foreign Affairs, with the utmost expedition, to the proper Departments of the Government, for inquiry, and in order that measures might be immediately taken, should occasion so require, for the due enforcement of the law. Inquiry was accordingly made in every case. In the cases of the Georgia and

the Shenandoah, nothing could be done, since each of these vessels had already departed from Her Majesty's dominions. In that of the Florida no evidence of unlawful intention was or could be obtained whilst she was within the United Kingdom. In that of the Alabama, the persons having possession of the ship carried her to sea before the order for seizing her was given.

In estimating the reasonableness of the views acted upon by Her Majesty's Government as to the sufficiency of the information and evidence from time to time submitted to them respecting apprehended infractions of the law by the construction and equipment of warlike vessels for the service of the Confederate States, it is necessary throughout to bear in mind not only that the trade of shipbuilding is a great and important branch of industry, which Her Majesty's Government was not required by any international duty to place under restrictions unauthorized by law, and over which it was not justified in assuming any arbitrary control, but also that the principal firms of British shipbuilders had been for a long time in the habit of entering into contracts with foreign Governments in all parts of the world for the construction, equipment, and sale of ships of war: such contracts being privately negotiated, in the ordinary course of business, without any power on the part of the Government to inquire into or interfere with them. No presumption, therefore, as to the real destination of any such vessel would in any case arise from the mere fact of her having a warlike character, although she might be in course of building during a state of war between particular Powers, while others were at peace.

In the papers relating to the iron-clad rams at Liverpool, ample illustration will be found of the difficulties which were liable to arise from this state of things whenever it became necessary to prove the actual purpose for which a ship of this character was being constructed: difficulties which, in the end, rendered it ultimately advisable for Her Majesty's Government to pay a very large sum of money for the purchase of the rams rather than risk the uncertain result of a trial.

The four vessels above specified were procured from British ports, or purchased from British owners, by the persons comprising the *de facto* Government of the Confederate States through their agents, and passed into the possession and control of that Government. After possession had been so acquired they were respectively armed for war by the orders of that Government, were commissioned as ships of war, and were commanded and officered by American citizens holding commissions in its naval service.

The crews of these vessels were enlisted on the high seas or elsewhere out of the jurisdiction of Her Majesty's Government, and, in the case of the Florida, chiefly in a port of the Confederate States. They were composed partly of British subjects, whom the American officers induced by persuasion and by promises of reward to take service when at a distance from England. The solicitations of the American officers were sometimes successful in inducing British seamen to serve: sometimes they were exerted in vain. But the vessels were also manned to a considerable extent with Americans and others drawn from the crews of American ships captured by them; though it is right to add that in the case of some of the latter class who left the Shenandoah at Melbourne, it was alleged that threats and ill usage had been employed in order to induce them to join.

These vessels, after having been armed for war, were received as vessels of war in the ports of Great Britain as well as in those of the other neutral countries visited by them. In British ports they were received on the same footing as in those of other neutral nations, and were allowed to repair and purchase supplies on the same conditions as armed vessels of the United States, without favour or partiality, careful precautions being employed to prevent any renewal or augmentation of their warlike force within British waters.

No serious endeavours to intercept or capture any of these vessels, during the times of their respective cruises, appear to have been made by the Government of the United States; and the losses inflicted by them would probably have been in great measure averted had reasonable activity and diligence been exerted by that Government and its officers for that purpose.

The general course of Her Britannic Majesty's Government throughout the war was governed by a strict regard for the obligations of neutrality and a sincere desire to fulfil them; and this is apparent as well from the facts which have been stated in relation to the four vessels above specified, as from the other facts stated in the earlier parts of this Case.

Thus it has been seen—

That, beside the Florida and Alabama, many other ships were believed and asserted by Mr. Adams to be fitting out in British ports for the purpose of carrying on war against the United States, and were made the subject of representations to Her Majesty's Government.

That in every case, without exception, the allegations of Mr. Adams were promptly

and carefully investigated; that in the greater number of cases Mr. Adams proved to be mistaken, the suspected ships being merely merchant-ships, built and fitted out with a view to a special employment, and not for war; that in all cases as to which reasonable evidence could be obtained, the suspected vessels were seized and proceedings instituted for the condemnation of them; that four were thus seized—the Alexandra, the two iron-clads, and the Canton or Pampero—and were prevented from being used for belligerent purposes; and one of them (the Alexandra), having been seized in England and restored by the verdict of a jury, was afterwards seized again in a British Colony.

That during the whole period of the war, which lasted for four years, no vessel armed for war was sent out or procured from British ports for belligerent use; and that of vessels specially adapted by construction for warlike use, two only, the Florida and Alabama, were so procured, in the manner and under the circumstances above described; whilst of these two one only, the Alabama, escaped and came into the possession of the Confederate Government without having undergone a seizure and trial.

Finally, it has been seen that the Government of Her Britannic Majesty, not content with carefully performing, to the utmost of its power, its recognized international obligations, overstepped on more than one occasion the actual limit of those obligations, for the sake of preventing anything whatever which might compromise, or be reasonably thought to compromise, its neutrality; and, in particular, that, in order to prevent vessels which had been armed or built for war within Great Britain from passing into the hands of a belligerent, a large expenditure was twice voluntarily incurred, much of it without any equivalent, in addition to the costs and charges occasioned by unsuccessful proceedings in Courts of Law.

PART X.

Remarks in conclusion.

Her Britannic Majesty's Government has now stated, for the information of the Arbitrators, the principal facts which it believes to be material to a just adjudication on the claims urged on the part of the United States. In so doing, Her Majesty's Government has been under the unavoidable disadvantage of having to meet a Case which has not yet been presented. When that shall have been done, and the claims of the United States shall have been clearly ascertained, Her Majesty's Government will avail itself of the opportunity which it will have, under Article IV of the Treaty, to submit to the Tribunal such additional or more ample statement of facts as may then appear to be necessary. It forbears also, until a comparison of the Cases submitted on both sides shall have shown what points are really in dispute between the two Governments, to enter into argument in support of its own position, and will, for the present, content itself with placing before the Tribunal the considerations which follow.

That vessels should, under whatever circumstances, have been procured from British ports for warlike use, and employed as belligerent cruizers against the United States (Great Britain herself being neutral), has been a subject of displeasure and regret to Her Britannic Majesty's Government. This regret is not removed by the facts—material as they undoubtedly are to a just appreciation of the question—that the vessels were obtained by means of artifice and concealment, which defeated the vigilance of the officers of the Government; that all of them, when they respectively departed from Her Majesty's dominions were wholly unarmed, and some of them constructed as mere merchant-ships, without any special adaptation for war; that they were few in number; and that the persons who gained possession and control of them, and by whom they were used for war, were themselves (as the Government of the United States has never ceased to maintain) American citizens. Circumstances such as these must greatly affect, in the judgment of any impartial person, the question as to the responsibility of the neutral Government; yet it is nevertheless true that the acts themselves (being such as, if done or authorized by the neutral Government, would have compromised its neutrality) had an inevitable tendency to disturb its relations with the belligerent against whom they were directed. Her Majesty's Government, therefore, has not hesitated to express its regret, frankly and publicly, to the Government of the United States, and has permitted the expression of it to be placed on record in the Treaty which has been concluded between the two Powers.

But the Government of the United States insists that it is entitled to satisfaction in money for claims which it asserts have arisen out of acts of these vessels—that is, out of operations of war carried on, by means of them, by the persons in possession of them for the time being. It is manifest that this contention is one which Her Britannic Majesty's Government, although animated by the most friendly feelings towards the United States, could not, with due regard for its own rights and those of neutral nations in general, consent to acknowledge, not believing it to be just. It is a claim of strict right, and can be supported only by clearly establishing that an international duty, owed by Great Britain to the United States, has been violated by Great Britain, and by showing further that an appreciable injury has accrued directly from this cause to the United States, for which Great Britain ought, in justice, to make reparation in money. It is for the Government of the United States, then, to substantiate these positions, to specify clearly the international duty or duties on which it relies, and to prove the violation of which it complains.

A charge of injurious negligence on the part of a sovereign Government, in the exercise of any of the powers of sovereignty, needs to be sustained on strong and solid grounds. Every sovereign Government claims the right to be independent of external scrutiny or interference in its exercise of these powers; and the general assumption that they are exercised with good faith and reasonable care, and that laws are fairly and properly administered—an assumption without which peace and friendly intercourse could not exist among nations—ought to subsist until it has been displaced by proof to the contrary. It is not enough to suggest or prove that a Government, in the exercise of a reasonable judgment on some question of fact or law, and using the means of information at its

command, has formed and acted on an opinion from which another Government dissents or can induce an Arbitrator to dissent. Still less is it sufficient to show that a judgment pronounced by a Court of competent jurisdiction, and acted upon by the Executive, was tainted with error. An administrative act founded on error, or an erroneous judgment of a Court, may indeed, under some circumstances, found a claim to compensation on behalf of a person or Government injured by the act or judgment. But a charge of negligence brought against a Government cannot be supported on such grounds. Nor is it enough to suggest or prove some defect of judgment or penetration, or somewhat less than the utmost possible promptitude and celerity of action, on the part of an officer of the Government in the execution of his official duties. To found on this alone a claim to compensation, as for a breach of international duty, would be to exact, in international affairs, a perfection of administration which few Governments or none attain in fact, or could reasonably hope to attain, in their domestic concerns; it would set up an impracticable and therefore an unjust and fallacious standard, would give occasion to incessant and unreasonable complaints, and render the situation of neutrals intolerable. Nor, again, is a nation to be held responsible for a delay or omission occasioned by mere accident, and not by the want of reasonable foresight or care. Lastly, it is not sufficient to show that an act has been done which it was the duty of the Government to endeavour to prevent. It is necessary to allege and to prove that there has been a failure to use, for the prevention of an act which the Government was bound to endeavour to prevent, such care as Governments ordinarily employ in their domestic concerns, and may reasonably be expected to exert in matters of international interest and obligation. These considerations apply with especial force to nations which are in the enjoyment of free institutions, and in which the Government is bound to obey, and cannot dispense with the laws.

If the Tribunal should come to the conclusion that Great Britain has incurred any liability to the United States, the question will then arise what should be deemed the just measure and extent of that liability. Her Britannic Majesty's Government abstains at present from entering into that question, and will reserve such observations as may be fitly offered in relation to it on the part of Great Britain to a later stage of the proceedings. Here it is sufficient to remark that a claim on the part of a belligerent to be indemnified at the expense of a neutral for losses inflicted or occasioned by any of the ordinary operations of war, on the plea that those operations were assisted or facilitated by negligence on the part of the neutral Government, is one which involves grave considerations and requires to be weighed with the utmost care. Losses of which such negligence is the direct and proximate cause (and it is in respect of such only that compensation could justly be awarded) are commonly not easy to separate from those springing from other causes. Success in warlike operations is generally due not only to the force possessed, but to the skill and courage exerted, by the successful combatant. If claims of this nature were to be freely admitted, a belligerent might demand to be indemnified by the neutral against consequences fairly attributable, in part or altogether, not to the fault of the latter but to his own want of capacity and enterprize. Her Majesty's Government has been compelled to point out that in respect of the vessels to which the foregoing statement relates there was, on the part of the Government of the United States or its officers, an extraordinary remissness in using the naval forces at their disposal, and that if ordinary activity had been exerted in the endeavour to intercept and capture these vessels, the losses of which the United States now complain would probably have been in great measure averted. It cannot be consistent with any reasonable view of international obligations that a belligerent State, alleging itself to be aggrieved by some imputed negligence of a neutral Government, should on that account claim indemnity from the neutral for losses in the course of warlike operations which it has not actively and diligently exerted itself to prevent or arrest.

It was the constant aim of Her Britannic Majesty's Government throughout the war to observe with fidelity and exactness the obligations, and to maintain unimpaired the rights, which the law and practice of nations have assigned to neutral Powers. In upholding those rights all the nations of the world are interested; and it was the duty of Great Britain, as a maritime Power of the first order, brought by circumstances into closer contact with the war than any other State, to resist on the one hand any encroachment on them, and to abstain on the other from any attempt to extend them beyond the just and expedient limits traced out by international law. Her Majesty's Government has given the best proof of its sincerity in these respects, as well as its earnest desire to promote the pacific and amicable settlement of international differences, by proposing and agreeing to refer to the judgment of impartial Arbitrators the question whether, in the matters complained of by the United States, it has failed to discharge any international duty. In deciding on the questions submitted to it, the Tribunal will be called upon to apply to

Part X.

——,

Concluding remarks.

them principles and considerations of wide application, not confined to maritime neutrality, nor to the acts and conduct of maritime nations alone. Great Britain is prepared to accept the award, whether favourable or unfavourable to her. She desires only that it shall be just. She claims only that it shall be founded on a true and equitable interpretation of the law of nations, and on principles which she herself and all other Powers may be satisfied, whether as neutral or as belligerent, to acknowledge and abide by in time to

NORTH AMERICA. No. 2 (1872).

THE CASE

OF

THE UNITED STATES,

TO BE LAID BEFORE THE

TRIBUNAL OF ARBITRATION

TO BE CONVENED AT GENEVA

UNDER THE

PROVISIONS OF THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND HER MAJESTY THE QUEEN OF GREAT BRITAIN, CONCLUDED AT WASHINGTON, MAY 8, 1871.

Presented to the House of Commons by Command of Her Majesty, in pursuance of their Address dated February 23, 1872.

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for—

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CASE.

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CASE OF THE UNITED STATES.

PART I.

INTRODUCTION.

Introduction.

Case of the United States.

Meeting of the Joint High Commission at Washington.

IN the spring of the present year (1871) five Commissioners on the part of Great Britain and five Commissioners on the part of the United States of America met at Washington in a body, which, when organized, was known as the Joint High Commission, in order to discuss, and, if possible, to arrange for, the adjustment of several causes of difference between the two Powers.

Among the subjects which was brought before that body by the United States were "the differences which arose during the rebellion in the United States, and which have existed since then, growing out of the acts committed by the several vessels, which have given rise to the claims generically known as the Alabama Claims."*

The sessions of the Joint High Commission were many in number, and were largely devoted to the consideration of the differences referred to in Mr. Fish's letter to Sir Edward Thornton, from which the above-cited quotation is made. The High Commissioners, in the protocol of their thirty-sixth conference, caused to be recorded a statement of their negotiations on this subject, in the following language:

Protocol of the Conferences as to the Alabama Claims.

"At the conference held on the 8th of March the American Commissioners stated that the people and Government of the United States felt that they had sustained a great wrong, and that great injuries and losses were inflicted upon their commerce and their material interests by the course and conduct of Great Britain during the recent rebellion in the United States; that what had occurred in Great Britain and her colonies during that period had given rise to feelings in the United States which the people of the United States did not desire to cherish toward Great Britain; that the history of the Alabama and other cruisers, which had been fitted out, or armed, or equipped, or which had received augmentation of force in Great Britain or in her colonies, and of the operations of those vessels, showed extensive direct losses in the capture and destruction of a large number of vessels, with their cargoes, and in the heavy national expenditures in the pursuit of the cruisers, and indirect injury in the transfer of a large part of the American commerical marine to the British flag, in the enhanced payments of insurance, in the prolongation of the war, and in the addition of a large sum to the cost of the war and the suppression of the rebellion; and also showed that Great Britain, by reason of failure in the proper observance of her duties as a neutral, had become justly liable for the acts of those cruisers and of their tenders; that the claims for the loss and destruction of private property which had thus far been presented amounted to about fourteen millions of dollars, without interest, which amount was liable to be greatly increased by claims which had not been presented; that the cost to which the Government had been put in the pursuit of cruisers could easily be ascertained by certificates of Government accounting officers; that, in the hope of an amicable settlement, no estimate was made of the indirect losses, without predudice, however, to the right to indemnification on their account in the event of no such settlement being made.

"The American Commissioners further stated that they hoped that the British Commissioners would be able to place upon record an expression of regret by Her

* Mr. Fish to Sir Edward Thornton, January 30, 1871, Vol. VI, page 16.

Majesty's Government for the depredations committed by the vessels whose acts were now under discussion. They also proposed that the Joint High Commission should agree upon a sum which should be paid by Great Britain to the United States, in satisfaction of all the claims and the interest thereon.

"The British Commissioners replied that Her Majesty's Government could not admit that Great Britain had failed to discharge toward the United States the duties imposed on her by the rules of International Law, or that she was justly liable to make good to the United States the losses occasioned by the acts of the cruisers to which the American Commissioners had referred. They reminded the American Commissioners that several vessels, suspected of being designed to cruise against the United States, including two iron-clads, had been arrested or detained by the British Government, and that that Government had, in some instances, not confined itself to the discharge of international obligations, however widely construed, as, for instance, when it acquired, at a great cost to the country, the control of the Anglo-Chinese Flotilla, which, it was apprehended, might be used against the United States.

"They added that, although Great Britain had, from the beginning, disavowed any responsibility for the acts of the Alabama and the other vessels, she had already shown her willingness, for the sake of the maintenance of friendly relations with the United States, to adopt the principle of arbitration, provided that a fitting Arbitrator could be found, and that an agreement could be come to as to the points to which arbitration should apply. They would, therefore, abstain from replying in detail to the statement of the American Commissioners, in the hope that the necessity for entering upon a lengthened controversy might be obviated by the adoption of so fair a mode of settlement as that which they were instructed to propose; and they had now to repeat, on behalf of their Government, the offer of arbitration.

"The American Commissioners expressed their regret at this decision of the British Commissioners, and said further that they could not consent to submit the question of the liability of Her Majesty's Government to arbitration unless the principles which should govern the Arbitrator in the consideration of the facts could be first agreed upon.

"The British Commissioners replied that they had no authority to agree to a submission of these claims to an Arbitrator with instructions as to the principles which should govern him in the consideration of them. They said that they should be willing to consider what principles should be adopted for observance in future; but that they were of opinion that the best mode of conducting an arbitration was to submit the facts to the Arbitrator, and leave him free to decide upon them after hearing such arguments as might be necessary.

"The American Commissioners replied that they were willing to consider what principles should be laid down for observance in similar cases in future, with the understanding that any principles that should be agreed upon should be held to be applicable to the facts in respect to the Alabama Claims.

"The British Commissioners replied that they could not admit that there had been any violation of existing principles of International Law, and that their instructions did not authorize them to accede to a proposal for laying down rules for the guidance of the Arbitrator, but that they would make known to their Government the views of the American Commissioners on the subject.

"At the respective conferences on March 9, March 10, March 13, and March 14, the Joint High Commission considered the form of the declaration of principles or rules which the American Commissioners desired to see adopted for the instruction of the Arbitrator and laid down for observance by the two Governments in future.

"At the close of the conference of the 14th of March, the British Commissioners reserved several questions for the consideration of their Government.

"At the conference on the 5th of April, the British Commissioners stated that they were instructed by Her Majesty's Government to declare that Her Majesty's Government could not assent to the proposed rules as a statement of principles of International Law which were in force at the time when the Alabama Claims arose, but that Her Majesty's Government, in order to evince its desire of strengthening the friendly relations between the two countries, and of making satisfactory provision for the future, agreed that, in deciding the questions between the two countries arising out of those claims, the Arbitrator should assume that Her Majesty's Government had undertaken to act upon the principles set forth in the rules which the American Commissioners had proposed, viz:

"'That a neutral Government is bound,

"'First, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended

to cruise or carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

"'Secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

"'Thirdly, to exercise due diligence in its own ports or waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.'

"It being a condition of this undertaking that these obligations should in future be held to be binding internationally between the two countries.

"It was also settled that, in deciding the matters submitted to him, the Arbitrator should be governed by the foregoing rules, which had been agreed upon as rules to be taken as applicable to the case, and by such principles of International Law, not inconsistent therewith, as the Arbitrator should determine to have been applicable to the case.

"The Joint High Commission then proceeded to consider the form of submission and the manner of constituting a Tribunal of Arbitration.

"At the conferences on the 6th, 8th, 9th, 10th, and 12th of April the Joint High Commission considered and discussed the form of submission, the manner of the award, and the mode of selecting the Arbitrators.

"The American Commissioners, referring to the hope which they had expressed on the 8th of March, inquired whether the British Commissioners were prepared to place upon record an expression of regret by Her Majesty's Government for the depredations committed by the vessels whose acts were now under discussion; and the British Commissioners replied that they were authorized to express, in a friendly spirit, the regret felt by Her Majesty's Government for the escape, under whatever circumstances, of the Alabama and other vessels from British ports, and for the depredations committed by those vessels.

"The American Commissioners accepted this expression of regret as very satisfactory to them and as a token of kindness, and said that they felt sure it would be so received by the Government and people of the United States.

"In the conference on the 13th of April the Treaty, Articles I to XI, were agreed to."

The Treaty referred to in this statement was signed at Washington on the 8th day of May, 1871, and the ratifications thereof were exchanged at London on the 17th day of the following June. The articles which relate to this subject are the following:— The Treaty of Washington.

"ARTICLE I.

"Whereas differences have arisen between the Government of the United States and the Government of Her Britannic Majesty, and still exist, growing out of the acts committed by the several vessels which have given rise to the claims generically known as the 'Alabama Claims;'

"And whereas Her Britannic Majesty has authorized Her High Commissioners and Plenipotentiaries to express, in a friendly spirit, the regret felt by Her Majesty's Government for the escape, under whatever circumstances, of the 'Alabama' and other vessels from British ports, and for the depredations committed by those vessels.

"Now, in order to remove and adjust all complaints and claims on the part of the United States, and to provide for the speedy settlement of such claims, which are not admitted by Her Britannic Majesty's Government, the High Contracting Parties agree that all the said claims, growing out of acts committed by the aforesaid vessels, and generically known as the 'Alabama Claims,' shall be referred to a Tribunal of Arbitration, to be composed of five Arbitrators, to be appointed in the following manner, that is to say: One shall be named by the President of the United States; one shall be named by Her Britannic Majesty; His Majesty the King of Italy shall be requested to name one; the President of the Swiss Confederation shall be requested to name one; and His Majesty the Emperor of Brazil shall be requested to name one.

"In case of the death, absence, or incapacity to serve of any or either of the said Arbitrators, or in the event of either of the said Arbitrators omitting or declining or ceasing to act as such, the President of the United States, or Her Britannic Majesty, or His Majesty the King of Italy, or the President of the Swiss Confederation, or His Majesty the Emperor of Brazil, as the case may be, may forthwith name another

person to act as Arbitrator in the place and stead of the Arbitrator originally named by such Head of a State.

"And in the event of the refusal or omission for two months after receipt of the request from either of the High Contracting Parties of His Majesty the King of Italy, or the President of the Swiss Confederation, or His Majesty the Emperor of Brazil, to name an Arbitrator, either to fill the original appointment, or in the place of one who may have died, be absent, or incapacitated, or who may omit, decline, or from any cause cease to act as such Arbitrator, His Majesty the King of Sweden and Norway shall be requested to name one or more persons, as the case may be, to act as such Arbitrator or Arbitrators.

"ARTICLE II.

"The Arbitrators shall meet at Geneva, in Switzerland, at the earliest convenient day after they shall have been named, and shall proceed impartially and carefully to examine and decide all questions that shall be laid before them on the part of the Governments of the United States and Her Britannic Majesty, respectively. All questions considered by the Tribunal, including the final award, shall be decided by a majority of all the Arbitrators.

"Each of the High Contracting Parties shall also name one person to attend the Tribunal as its agent to represent it generally in all matters connected with the arbitration.

"ARTICLE III.

"The written or printed case of each of the two Parties, accompanied by the documents, the official correspondence, and other evidence on which each relies, shall be delivered in duplicate to each of the Arbitrators and to the agent of the other Party as soon as may be after the organization of the Tribunal, but within a period not exceeding six months from the date of the exchange of the ratifications of this Treaty.

"ARTICLE IV.

"Within four months after the delivery on both sides of the written or printed case, either Party may, in like manner, deliver in duplicate to each of the said Arbitrators, and to the agent of the other Party, a counter-case and additional documents, correspondence, and evidence, in reply to the case, documents, correspondence, and evidence so presented by the other Party.

"The Arbitrators may, however, extend the time for delivering such counter case, documents, correspondence, and evidence, when, in their judgment, it becomes necessary, in consequence of the distance of the place from which the evidence to be presented is to be procured.

"If in the case submitted to the Arbitrators either Party shall have specified or alluded to any Report or document in its own exclusive possession, without annexing a copy, such Party shall be bound, if the other Party thinks proper to apply for it, to furnish that Party with a copy thereof; and either Party may call upon the other, through the Arbitrators, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance some reasonable notice as the Arbitrators may require.

"ARTICLE V.

"It shall be the duty of the Agent of each Party, within two months after the expiration of the time limited for the delivery of the counter-case on both sides, to deliver in duplicate to each of the said Arbitrators and to the Agent of the other Party a written or printed argument, showing the points and referring to the evidence upon which his Government relies; and the Arbitrators may, if they desire further elucidation with regard to any point, require a written or printed statement or argument, or oral argument by Counsel upon it; but in such case the other Party shall be entitled to reply either orally or in writing, as the case may be.

"ARTICLE VI.

"In deciding the matters submitted to the Arbitrators they shall be governed by the following three Rules, which are agreed upon by the High Contracting Parties as Rules to be taken as applicable to the case, and by such principles of international law, not inconsistent therewith, as the Arbitrators shall determine to have been applicable to the case:

"A neutral Government is bound—

"First, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruize or to carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction, of any vessel intended to cruize or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

"Secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

"Thirdly, to exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

"Her Britannic Majesty has commanded Her High Commissioners and Plenipotentiaries to declare that Her Majesty's Government cannot assent to the foregoing Rules as a statement of principles of international law which were in force at the time when the claims mentioned in Article I arose, but that Her Majesty's Government, in order to evince its desire of strengthening the friendly relations between the two countries, and of making satisfactory provision for the future, agrees that, in deciding the questions between the two countries arising out of those claims, the Arbitrators should assume that Her Majesty's Government had undertaken to act upon the principles set forth in these Rules.

"And the High Contracting Parties agree to observe these Rules as between themselves in future, and to bring them to the knowledge of other maritime Powers, and to invite them to accede to them.

"ARTICLE VII.

"The decision of the Tribunal shall, if possible, be made within three months from the close of the argument on both sides.

"It shall be made in writing and dated, and shall be signed by the Arbitrators who may assent to it.

"The said Tribunal shall first determine as to each vessel separately whether Great Britain has, by any act or omission, failed to fulfil any of the duties set forth in the foregoing three Rules, or recognized by the principles of international law not inconsistent with such Rules, and shall certify such fact as to each of the said vessels. In case the Tribunal find that Great Britain has failed to fulfil any duty or duties as aforesaid, it may, if it think proper, proceed to award a sum in gross to be paid by Great Britain to the United States for all the claims referred to it; and in such case the gross sum so awarded shall be paid in coin by the Government of Great Britain to the Government of the United States, at Washington, within twelve months after the date of the award.

"The award shall be in duplicate, one copy whereof shall be delivered to the agent of the United States for his Government, and the other copy shall be delivered to the agent of Great Britain for his Government.

"ARTICLE VIII.

"Each Government shall pay its own agent and provide for the proper remuneration of the counsel employed by it and of the Arbitrator appointed by it, and for the expense of preparing and submitting its case to the Tribunal. All other expenses connected with the arbitration shall be defrayed by the two Governments in equal moieties.

"ARTICLE IX.

"The Arbitrators shall keep an accurate record of their proceedings, and may appoint and employ the necessary officers to assist them.

"ARTICLE X.

"In case the Tribunal finds that Great Britain has failed to fulfil any duty or duties as aforesaid, and does not award a sum in gross, the High Contracting Parties agree that a Board of Assessors shall be appointed to ascertain and determine what claims are valid, and what amount or amounts shall be paid by Great Britain to the

United States on account of the liability arising from such failure, as to each vessel, according to the extent of such liability as decided by the Arbitrators.

"The Board of Assessors shall be constituted as follows: One member thereof shall be named by the President of the United States, one member thereof shall be named by Her Britannic Majesty, and one member thereof shall be named by the Representative at Washington of His Majesty the King of Italy; and, in case of a vacancy happening from any cause, it shall be filled in the same manner in which the original appointment was made.

"As soon as possible after such nominations the Board of Assessors shall be organized in Washington, with power to hold their sittings there, or in New York, or in Boston. The members thereof shall severally subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment and according to justice and equity, all matters submitted to them, and shall forthwith proceed, under such rules and regulations as they may prescribe, to the investigation of the claims which shall be presented to them by the Government of the United States, and shall examine and decide upon them in such order and manner as they may think proper, but upon such evidence or information only as shall be furnished by or on behalf of the Governments of the United States and of Great Britain respectively. They shall be bound to hear on each separate claim, if required, one person on behalf of each Government, as counsel or agent. A majority of the Assessors in each case shall be sufficient for a decision.

"The decision of the Assessors shall be given upon each claim in writing, and shall be signed by them respectively and dated.

"Every claim shall be presented to the Assessors within six months from the day of their first meeting, but they may, for good cause shown, extend the time for the presentation of any claim to a further period not exceeding three months.

"The Assessors shall report to each Government, at or before the expiration of one year from the date of their first meeting, the amount of claims decided by them up to the date of such report; if further claims then remain undecided, they shall make a further report at or before the expiration of two years from the date of such first meeting; and in case any claims remained undetermined at that time, they shall make a final report within a further period of six months.

"The report or reports shall be made in duplicate, and one copy thereof shall be delivered to the Secretary of State of the United States, and one copy thereof to the Representative of Her Britannic Majesty at Washington.

"All sums of money which may be awarded under this Article shall be payable at Washington, in coin, within twelve months after the delivery of each report.

"The Board of Assessors may employ such clerks as they shall think necessary.

"The expenses of the Board of Assessors shall be borne equally by the two Government, and paid from time to time, as may be found expedient, on the production of accounts certified by the Board. The remuneration of the Assessors shall also be paid by the two Governments in equal moieties in a similar manner.

"ARTICLE XI.

"The High Contracting Parttes engage to consider the result of the proceedings of the Tribunal of Arbitration and of the Board of Assessors, should such Board be appointed, as a full, perfect, and final settlement of all the claims hereinbefore referred to; and further engage that every such claim, whether the same may or may not have been presented to the notice of, made, preferred, or laid before the Tribunal or Board, shall, from and after the conclusion of the proceedings of the Tribunal or Board, be considered and treated as finally settled, barred, and henceforth inadmissible."

What the United States will attempt to establish.

In accordance with the provisions of Article III of the Treaty, the United States have the honour to lay before the Tribunal of Arbitration this, their "Printed Case," accompanied by the documents, the official correspondence, and other evidence on which they rely. They propose to show, by a historical statement of the course pursued by the British Government towards the United States, from the outbreak of the insurrection in the Southern States of the United States, that there was on the part of the British Government a studied unfriendliness or fixed predisposition adverse to the United States, which furnished a constant motive for the several acts of omission and commission, hereinafter complained of, as inconsistent with its duty as a neutral.

Having adduced the evidence of this fact, the United States will next endeavour to indicate to the Tribunal of Arbitration what they deem to have been the duties of

Great Britain toward the United States, in respect to the several cruizers which will be named in this paper.

They will then endeavour to show that Great Britain failed to perform those duties, both generally, and specifically as to each of the cruizers, and that such failure involved the liability to remunerate the United States for losses thus inflicted upon them, upon their citizens, and upon others protected by their flag.

Lastly, they will endeavour to satisfy the Tribunal of Arbitration that it can find, in the testimony which will be offered by the United States, ample material for estimating the amount of such injuries, and they will ask the Tribunal to exercise the powers conferred upon it by Article VII of the Treaty, in awarding "a sum in gross, to be paid by Great Britain to the United States, for all the claims referred to."

In April, 1869, the President communicated to the Senate a mass of official correspondence and other papers relating to those claims, which was printed in five volumes. These, and two additional volumes, containing further correspondence, evidence, and documents, accompany this case. The whole will form "the documents, the official correspondence, and the other evidence on which [the United States] relies," which is called for by Article III of the Treaty. Reference will be made throughout this paper to these volumes thus: "Vol. I, page 1," &c., &c., &c. The United States understand, however, that they may, under the terms of the Treaty, present hereafter "additional documents, correspondence, and evidence," and they reserve the right to do so.

PART II.

THE UNFRIENDLY COURSE PURSUED BY GREAT BRITAIN TOWARD THE UNITED STATES FROM THE OUTBREAK TO THE CLOSE OF THE INSURRECTION.

Unfriendliness of Great Britain.

Relations of the United States with Great Britain prior to 1860.

IN 1860 the United States had been an independent nation for a period of eighty-four years, and acknowledged as such by Great Britain for a period of seventy-seven years.

During this period, while sharing to a remarkable extent in the general prosperity of the Christian Powers, they had so conducted their relations towards those Powers as to merit, and they believed, that they had secured the good-will and esteem of all. Their prosperity was the result of honest thrift; their exceptional increase of population was the fruit of a voluntary immigration to their shores; and the vast extension of their domain was acquired by purchase and not by conquest.

From no people had they better right to expect a just judgment than from the people of Great Britain. In 1783, the War of Separation had been closed by a Treaty of Peace, which adjusted all the questions then pending between the two Governments. In 1794, new questions having arisen, growing out of the efforts of France to make the ports of the United States a base of hostile operations against Great Britain, a new Treaty was made, at the instance of the United States, by which all the difficulties were arranged satisfactorily to Great Britain, and at the same time so as to preserve the neutrality and the honour of the United States. In the same year, also, the first Neutrality Act was passed by Congress,* prescribing rules and establishing the modes of proceeding to enable the United States to perform their duties as a neutral toward Great Britain and other belligerents. In 1812 they were forced into war with Great Britain, by the claim of that Power to impress seamen on the high seas from vessels of the United States. After three years the war ceased, and the claim has never since been practically enforced. In 1818 they met British negotiators more than half-way in arranging disputed points about the North American Fisheries. In 1827, having added to their own right of discovery the French and Spanish titles to the Pacific coast, they voluntarily agreed to a joint occupation of a disputed portion of this territory, rather than resort to the last arbitrament of nations. In 1838, when a serious rebellion prevailed in Canada, the Congress of the United States, at the request of Great Britain, passed an Act authorizing the Government to exercise exceptional powers to maintain the national neutrality. In 1842 the Government of the United States met a British Envoy in a spirit of conciliation, and adjusted by agreement the disputed boundary between Maine and the British Possessions. In 1846 they accepted the proposal of Great Britain, made at their own suggestion, to adopt the forty-ninth parallel as a compromise-line between the two Columbias, and to give to Great Britain the whole of Vancouver's Island. In 1850 they waived, by the Clayton-Bulwer Treaty, the right of acquisition on the Isthmus, across which for many years the line of communication from one part of their dominions to the other must run. In 1854 they conferred upon the people of the British Possessions in North America the advantages of a free, full commercial intercourse with the United States for their products, without securing corresponding benefits in return. Thus a series of difficult questions, some of which might have led to war, had been peaceably arranged by negotiations, and the increasing intercourse of the two nations was constantly fostered by continuing acts of friendliness on the part of the Government of the United States.

Friendly relations of the two Governments in 1860.

All the political relations of the United States with England, with the exception of the episode of the war of 1812, had been those of increasing amity and friendship,

* For an abstract of this Act see Vol. IV, pp. 102, 103.

confirmed by a repeated yielding of extreme rights, rather than imperil the cordial relations which the United States so much desired to maintain with their nearest neighbours, their best customers, and their blood-relations. They had good right, therefore, to believe, and they did believe, that, by virtue of this friendly political understanding, and in consequence of the gradual and steady assimilation of the commercial interests and the financial policies of the two Governments, there was in Great Britain, in the summer of 1860, sympathy for the Government and affection for the people of the United States. They had equal reason to think that neither the British Government nor people would look with either ignorance or unconcern upon any disaster to them. Above all they had at that time a right to feel confident, that in any controversy which might grow out of the unhappy existence of African slavery in certain of the Southern States, the British Government would not exercise its sovercign powers, questionably or unquestionably, in favour of the supporters of slavery.

Unfriendliness of Great Britain.

Friendly relations of the two Government in 1860.

On the 6th day of November, in that year, the jurisdiction of the Government of the United States extended unquestioned over eighteen States from which African slavery was excluded;* over fifteen States in which it was established by law;† and over a vast territory in which under the then prevailing laws, persons with African blood in their veins could be held as slaves.

The United States i 1860.

This large unsettled or partially settled territory, as it might become peopled, was also liable to be divided into new States, which, as they entered the Union, might, as the law then stood, become "Slave States," thus giving the advocates of slavery an increased strength in the Congress of the nation, and more especially in the Senate, and a more absolute control of the National Government.

Since the date named, three new States, entitled to a represention of six Senators in the National Senate, have been admitted into the Union from this territory;‡ and the remainder of the great dominions of the United States is now divided into ten incipient political organizations, known as territories, which, with one exception, may at some future time become States.§

The General election for President of the United States, which took place on the 6th of November, 1860, was conducted in strict conformity with the provisions of the constitution and laws of the country, and resulted in the choice of Abraham Lincoln. The party which elected him was pledged in advance to maintain "that the normal condition of all the territory of the United States, is that of freedom," and to "deny the authority of Congress, of a Territorial Legislature, or of any individuals to give legal existence to slavery in any territory of the United States."‖ The word "Territory" is here used in the above-mentioned sense of an incipient political organization, which may at some future time become a State.

Election of Mr. Lincoln.

This decision of the people of the United States was resisted by some of the inhabitants of the States where slavery prevailed. The people of South Carolina, with an undoubted unanimity, commenced the hostile movement. In the following month they proclaimed, through a State Convention, their purpose to secede from the Union, because the party about to come into power had "announced that the South shall be excluded from the common territory."¶ The State of Alabama, on the 11th of January, with much less unanimity (the vote in the Convention being 61 ayes to 39 nays**), followed the example of South Carolina, giving, as their reason, that the election of Mr. Lincoln, "by a sectional party, avowedly hostile to the domestic institutions [*i.e.* slavery] of Alabama," was "a political wrong of an insulting and menacing character."††

Secession of South Carolina.

Of Alabama.

The State of Georgia followed after a much greater struggle, in which the party in favour of remaining in the Union resisted to the last, the final vote being 208 ayes to

Of Georgia and oth States.

* Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Ohio, Indiana, Illinois, Michigan, Iowa, Wisconsin, California, Minnesota, Oregon.

† Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Kentucky, Tennessee, Louisiana, Mississippi, Alabama, Missouri, Arkansas, Florida, Texas.

‡ Nevada, Nebraska, Kansas. West Virginia was formed from a portion of the territory of Virginia, and for this reason does not come within the meaning of the text, thought it became a State after the date mentioned.

§ New Mexico, Utah, Washington, Dakota, Colorado, Arizona, Idaho, Montana, Wyoming, District of Columbia. The territory known as the Indian Territory is without political organization, having neither Governor nor Delegate in Congress. It cannot be considered as coming within the meaning of the text

‖ Greeley's American Conflict, Vol. I, page 320.

¶ McPherson's History of the Rebellion, page 16.

** McPherson's History of the Rebellion, page 4.

†† Appleton's Annual Cyclopædia, 1861, page 10

Unfriendliness of Great Britain.

89 nays.* Florida, Mississipi, Louisiana, and Texas each framed an ordinance of secession from the Union before the 4th of February, in each case with more or less unanimity.

Opposition to the territorial limitation of slavery the cause of secession.

On the 4th of February, 1861, representatives from some of the States which had attempted to go through the form of secession, and representatives from the State of North Carolina, which had not at that time attempted it, met at Montgomery,† in the State of Alabama, for the purpose of organizing a provisional government, and having done so, elected Mr. Jefferson Davis as the Provisional President, and Mr. Alexander H. Stephens as the Provisional Vice-President of the proposed Confederation. In accepting this office, on the 18th February, Mr. Jefferson Davis said: ‡ "We have vainly endeavoured to secure tranquillity and obtain respect for the rights to which we were entitled" [*i. e.*, the right to extend the domains of slavery]. "As a necessity, and not a choice, we have resorted to the remedy of separation." * * "Our industrial pursuits have received no check; the cultivation of our fields progresses as heretofore; and even should we be involved in war, there would be no considerable diminution in the production of the staples which have constituted our exports, in which the commercial world has an interest scarcely less than our own. This common interest of producer and consumer can only be intercepted by an exterior force, which should obstruct its transmission to foreign markets—a course of conduct which would be detrimental to the manufacturing and commercial interests abroad."

Mr. Stephens spoke with still more explicitness. He said§ the "foundations [of the new Government] are laid. Its corner-stone rests upon the great truth that the negro is not equal to the white man; that slavery—subordination to the superior race—is his natural and moral condition.

Having thus formally declared that the contemplated limitation of the territory within which negro slavery should be tolerated was the sole cause of the projected separation, and having appealed to the world to support them, the seceding States made efforts, which proved vain, to induce the other slave States to join them. No other States passed ordinances of secession until after the fall of Fort Sumter. On the contrary, the people of the States of Tennesse‖ and Missouri¶ before that time voted by large majorities against secession; and in the States of North Carolina and Virginia conventions were called, and were in session when some of the events hereinafter referred to took place; and these bodies were known to be opposed to the revolutionary movements in South Carolina and the six States bordering on the Gulf of Mexico.

A party in the South opposed to secession.

A large minority, if not a majority, of the people of the slave States known as Border States, and of the mountainous parts of the six States known as the Gulf States, did not desire separation. They were attached to the Union, which had fostered and protected their interests, and they expressed no dissatisfaction, except with the proposed policy as to the extension of slavery, and in many cases not even with that. Their feelings were forcibly expressed by the distinguished Alexander H. Stephens, Provisional Vice-President of the Montgomery Government, in a speech made in the Convention in Georgia before that State passed the ordinance of secession, and about two months before he accepted office at Montgomery. He said,** "This step [of secession] once taken can never be recalled; and all the baleful and withering consequences that must follow will rest on the Convention for all coming time. When we and our posterity shall see our lovely South desolated by the demon of war, which this act of yours will inevitably invite and call forth; when our green fields of waving harvest shall be trodden down by the murderous soldiery and fiery car of war sweeping over our land; our temples of justice laid in ashes; all the horrors and desolations of war upon us, who but this Convention will be held responsible for it, and who but him who shall have given his vote for this unwise and ill-timed measure, as I honestly think and believe, shall be held to strict account for this suicidal act by the present generation, and probably cursed and execrated by posterity for all coming time, for the wide and desolating ruin that will inevitably follow this act you now propose to perpetrate? Pause, I entreat you, and consider for a moment what reasons you can give that will even satisfy yourselves in calmer moments; what reasons you can give to your fellow-

* McPherson's History of the Rebellion, page 3.
† Appleton's Annual Cyclopædia, 1861, Vol. I, page 126.
‡ Appleton's Annual Cyclopædia, 1861, page 613.
§ Appleton's Annual Cyclopædia, 1861, page 129.
‖ McPherson's History of the Rebellion, page 5.
¶ Appleton's Annual Cyclopœdia, 1861, page 478.
** McPherson's History of the Rebellion, page 25.

sufferers in the calamity that it will bring upon us. What reasons can you give to the nations of the earth to justify it? They will be the calm and deliberate judges in the case, and what cause or one overt act can you name or point to, on which to rest the plea of justification? What right has the North assailed? What interest of the South has been invaded? What justice has been denied? And what claim founded in justice and right has been withheld? Can either of you to-day name one governmental act of wrong, deliberately and purposely done by the Government of Washington, of which the South has a right to complain? I challenge the answer."

Unfriendliness of Great Britain.

A party in the South opposed to secession.

All the facts above referred to in this paper were parent to the whole world, were ostentatiously put forth by the insurgents, and were openly commented upon by the public press throughout the United States. It is, therefore, not unreasonable to presume that the British Government received from its representatives and agents in the United States, full information concerning them as they took place. To suppose the contrary would be to ignore the well-known fidelity of those officers.

Mr. Lincoln entered upon the duties of his office on the 4th of March, 1861. He found the little army of the United States scattered, and disintegrated; the navy sent to distant quarters of the globe; the Treasury bankrupt; the credit of the United States seriously injured by forced sales of Government securities; the public service demoralized; the various departments of the Government filled with unfaithful clerks and officers, whose sympathies were with the South, who had been placed in their positions for the purpose of paralyzing his administration. These facts, which were known to the world, must have attracted the attention of the observant Representative of Great Britain at Washington, and must have enabled him to make clear to his Government the reasons why the Cabinet at Washington must pause before asserting its rights by force.

Inauguration of Mr. Lincoln.

The new Government took an early opportunity to inform the British Government of its purposes.* On the 9th of March, four days after the instalment of Mr. Lincoln, Mr. Dallas, the Minister of the United States at London, was instructed to communicate to Lord Russell the Inaugural Address of the President, and to assure him that the President entertained full confidence in the speedy restoration of the harmony and unity of the Government. He was further told that "the United States have had too many assurances and manifestations of the friendship and good-will of Great Britain, to entertain any doubt that these considerations will have their just influence with the British Government, and will prevent that Government from yielding to solicitations to intervene in any unfriendly way in the domestic concerns of our country."

The British Government informed of his purposes.

Mr. Dallas,† in complying with his instructions (April 9, 1861), pressed upon Lord Russell the importance of England and France abstaining, "at least for a considerable time, from doing what, by encouraging groundless hopes, would widen a breach still thought capable of being closed." Lord Russell replied that the coming of Mr. Adams (Mr. Dallas's successor)† "would doubtless be regarded as the appropriate and natural occasion for finally discussing and determining the question."

Lord John Russell promises to await Mr. Adams's arrival before acting.

The United States therefore had reasonable ground to believe, not only in view of the great moral interests of which they were the exponents, and of the long-standing friendship between them and Great Britain, but also in consequence of the voluntary promise of Lord Russell, that an opportunity would be afforded them to explain their views and purposes through their newly selected and specially trusted representative; and least of all had they cause to anticipate that a Government which they supposed to be in sympathy with their policy as to African slavery, would precipitate a decision as to the insurgents, which was so obviously injurious to the United States, as to almost appear to have been designedly so.

The delay upon which the Government of the United States relied to firmly secure the loyalty of the Border States, and their aid in inducing the peaceable return of the Gulf States, was interrupted by the attack upon Fort Sumter, made by order of the Government at Montgomery. This attack ended in the surrender of the garrison on the 13th of April. This was followed on the fifteenth of April by a Proclamation of the President,‡ calling out the militia, and convening an extra session of Congress on the 4th day of the next July.

Surrender of Fort Sumter.

On the 17th of April, Mr. Jefferson Davis§ gave notice that letters of marque

The insurgents to issue letters of marque.

* Seward to Dallas, Vol. I, page 8.
† Dallas to Seward, Vol. I, page 12.
‡ Vol. I, page 16.
§ Appleton's Annual Cyclopædia, 1861, page 137.

Unfriendliness of Great Britain.

would be granted by the persons who had attempted to establish a Government at Montgomery, by usurping the authority of the United States.

Proclamation giving notice of blockade.

Objects of that Proclamation.

On the 19th of April, President Lincoln issued a Proclamation declaring that a blockade of the ports within the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas, would be established for the purpose of collecting the revenue in the disturbed part of the country, and for the protection of the public peace, and of the lives and properties of quiet and orderly citizens, until Congress should assemble. That body was summoned to assemble on the 4th day of the following July.

The full text of this Proclamation will be found in Vol. I, page 21.

In the course of the discussion between the two Governments growing out of the war, it has been repeatedly asserted that Her Majesty's Government was induced to confer upon the insurgents in the South the status of belligerents, in consequence of the receipt of the news of the President's Proclamation of April 19. The United States are therefore forced to invite the patience of the Board of Arbitrators, while they establish, from conclusive proof, that Her Majesty's Government is mistaken in that respect.

The joint action of France invited by Great Britain.

Before any armed collision had taken place, there existed an understanding between Her Majesty's Government and the Government of the Emperor of the French, with a view to securing a simultaneous and identical course of action of the two Governments on American questions. It is within the power of the British Government to inform the Arbitrators when that understanding was reached. The fact that it had been agreed to by the two Governments was communicated to Mr. Dallas by Lord John Russell, the 1st day of May, 1861.*

There was nothing in the previous relations between Great Britain and the United States which made it necessary for Her Majesty's Government to seek the advice, or to invite the support of the Emperor of the French, in the crisis which was threatened. The United States are at a loss to conjecture what inducement could have prompted such an act, unless it may have been the perception, on the part of Her Majesty's Government, that it was in its nature not only unfriendly, but almost hostile to the United States.

When the news of the bloodless attack upon Fort Sumter became known in Europe, Her Majesty's Government apparently assumed that the time had come for the joint action which had been previously agreed upon; and, without waiting to learn the purposes of the United States, it announced its intention to take the first step by recognizing the insurgents as belligerents.

When the President's Proclamation was received in Great Britain.

The President's Proclamation, which has since been made the ostensible reason for this determination, was issued on the 19th of April, and was made public in the Washington newspapers of the morning of the 20th. An imperfect copy of it was also telegraphed to New York, and from thence to Boston, in each of which cities it appeared in the newspapers of the morning of the 20th.

The New York papers of the 20th gave the substance of the Proclamation, without the official commencement and close, and with several errors of more or less importance.

The Boston papers of the same date, in addition to the errors in the New York copy omitted the very important statement in regard to the collection of the revenue, which appears in the Proclamation as the main cause of its issue.

During the morning of the 19th of April a riot took place in Baltimore, which ended in severing direct communication, by rail or telegraph, between Washington and New York. Telegraphic communication was not restored until the 30th of the month. The regular passage of the mails and trains was resumed about the same time. It appears by a despatch from Lord Lyons to Lord John Russell that the mails had not been resumed on the 27th.†

It is absolutely certain that no full copy of the text of the Proclamation could have left Washington by the mails of the 19th, and equally certain that no copy could have reached New York from Washington after the 19th for several days.

On the 20th the steamer Canadian sailed from Portland, taking the Boston papers of that day, with the imperfect copy of the Proclamation, in which the clause in regard to the collection of the revenue was suppressed. This steamer arrived at Londonderry on the 1st of May, and the "Daily News" of London, of the 2nd of May, published the following telegraphic items of news: "President Lincoln has issued a Proclamation, declaring a blockade of all the ports in the seceded States. The Federal Government

* Mr. Dallas to Mr. Seward, May 2, 1861, Vol. I, pp. 33–34.

† Blue Book, North America, No. 1, 1862, page 26.

will condemn as pirates all privateer vessels which may be seized by Federal ships." The Canadian arrived at Liverpool on the 2nd of May, and the "Daily News" of the 3rd, and the "Times" of the 4th of May, published the imperfect Boston copy of the Proclamation in the language as shown in the note below.* No other than the Boston copy of the Proclamation appears to have been published in the London newspapers. It is not likely that a copy was received in London before the 10th by the Fulton from New York.

Unfriendliness of Great Britain.

When the President's Proclamation was received in Great Britain.

It was on this meagre and incorrect information that the advice of the British Law Officers was based, upon which that Government acted. On the evening of the 2nd of May, Lord John Russell, stated in the House of Commons that† "Her Majesty's Government heard the other day that the Confederated States have issued letters of marque, and to-day we have heard that it is intended there shall be a blockade of all the ports of the Southern States. As to the general provisions of the law of nations on these questions, some of the points are so new, as well as so important, that they have been referred to the Law Officers of the Crown for their opinions."

Opinion of Law Officers taken on an imperfect copy.

It is with deep regret that the United States find themselves obliged to lay before the Tribunal of Arbitration the evidence that, when this announcement was made in the House of Commons, Her Majesty's Government had already decided to recognize the right of the Southern insurgents to attack and destroy the commerce of the United States on the high seas. On the 1st day of May, 1861 (two days before they could have heard of the issue of the President's Proclamation), Lord John Russell wrote as follows to the Lords Commissioners of the Admiralty:‡

Her Majesty's Government decide on the 1st of May to recognize a state of war.

"The intelligence which reached this country by the last mail to the United States gives reason to suppose that a civil war between the Northern and Southern States of that Confederacy was imminent, if indeed it might not be considered to have already begun.

"Simultaneously with the arrival of this news, a telegram, purporting to have been conveyed to Halifax from the United States, was received, which announced that the President of the Southern Confederacy had taken steps for issuing letters of marque against the vessels of the Northern States."

* * * * * *

"I need scarcely observe to your Lordships that it may be right to apprise the Admiral that, much as Her Majesty regrets the prospect of civil war breaking out in a country in the happiness and peace of which Her Majesty takes the deepest interest, *it is Her Majesty's pleasure that nothing should be done by her naval forces which should indicate any partiality or preference for either party in the contest that may ensue.*"

Lord John Russell and the Insurgent Commissioners discuss the recognition of Southern independence.

On the 4th of May§ Lord John Russell held an interview with some individuals, whom he described as "the three gentlemen deputed by the Southern Confederacy to obtain their recognition as an independent State." Although he informed them that he could hold no official communication with them, he did discuss with them the question of recognition, and he indicated to them the points to which they must direct their attention in the discussion of the subject. He also listened to their views in response thereto; and when, on the termination of the interview, they informed him

* The following is the President's Proclamation of the blockade of the Southern ports:—

"An insurrection against the Government of the United States has broken out in the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas, and the laws of the United States cannot be executed effectually therein comformably to that provision of the Constitution which requires duties to be uniform throughout the United States; and further, a combination of persons, engaged in such insurrection, have threatened to grant pretended letters of marque to authorize the bearers thereof to commit assaults on the lives, vessels, and property of good citizens of the country lawfully engaged in commerce on the high seas and in the waters of the United States; and whereas an Executive Proclamation has already been issued, requiring the persons engaged in these disorderly proceedings to desist, and therefor calling out the militia force for the purpose of repressing the same, and convening Congress in extraordinary Session to deliberate and determine thereon, the President, with a view to the same purposes before mentioned, and to the protection of the public peace and the lives and property of its orderly citizens pursuing their lawful occupations until Congress shall have assembled and deliberated on said unlawful proceedings, or until the same shall have ceased, has further deemed it advisable to set on foot a blockade of the ports within the States aforesaid, in pursuance of the laws of the United States and the laws of nations in such cases provided. For this purpose a competent force will be posted so as to prevent the entrance and exit of vessels from the ports aforesaid. If, therefore, with a view to violate such blockade, any vessel shall attempt to leave any of the said ports, she will be duly warned by the commander of one of said blockading vessels, who will indorse on her register the fact and date of such warning; and if the same vessel shall again attempt to enter or leave a blockaded port, she will be captured and sent to the nearest convenient port for such proceedings against her and her cargo as may be deemed advisable."

† Vol. IV, page 482.

‡ Vol. I, page 33.

§ Vol. I, page 37.

Unfriendliness of Great Britain.

"that they should remain in London for the present, in the hope that the recognition of the Southern Confederacy would not be long delayed," he interposed no objections to such a course, and suggested no improbability of such a recognition.

Communication with the French Government.

On the 5th of May the steamship Persia arrived at Liverpool with advices from New York to the 25th of April. Lord John Russell stated on Monday, the 6th of May, in a communication to Lord Cowley,* "that Her Majesty's Government received no despatches from Lord Lyons by the mail which has just arrived [the Persia], the communication between Washington and New York being interrupted."

In the same despatch Lord Cowley is informed "that Her Majesty's Government cannot hesitate to admit that such Confederacy is entitled to be considered as a belligerent, and as such invested with all the rights and prerogatives of a belligerent," and he is instructed to invite the French Government to a joint action, and a line of joint policy with the British Government, toward the United States. Lord Cowley, under these instructions, had an interview on the 9th of May with the French Minister for Foreign Affairs. The Tribunal may infer from the published correspondence that it was assumed at this interview that the two Governments should act together, and that the letters of marque which might be issued by the insurgents should be respected. Lord Cowley reported that† "His Excellency said further that, in looking for precedents, it had been discovered that Great Britain, although treating at the commencement of the American war letters of marque as piracy, had, after a time, recognized the belligerent rights of the States in rebellion against her." The answer to these instructions was received at the Foreign Office on the 11th of May.

Answer of the French Government.

The United States are firmly convinced that no correct or complete copy of the President's Proclamation could have been received there in advance of it. It is known that the official copy forwarded by Lord Lyons to his Government reached London on the 14th of May.‡ The official copy sent by Mr. Seward to Mr. Dallas reached Southampton on the evening of the 9th of May, and London on the 10th. It is stated in the British notes on Mr. Fish's instruction of September 25, 1869, to Mr. Motley, that the Proclamation was communicated officially by Mr. Dallas to Lord John Russell on the 11th. There is no evidence of this fact in the archives of the Legation of the United States at London, or at the Department of State at Washington. But even if the statement in the notes be correct, still the British Government received, in the afternoon of the 11th of May, 1861, its first complete and official copy of the President's Proclamation, ten days after Lord John Russell had decided to award the rights of belligerency on the ocean to the insurgents, eight days after the subject had been referred to the Law Officers for their opinion, and five days after the decision of Her Majesty's Government upon that opinion had been announced in the House of Commons, as hereinafter set forth.

When the President's Proclamation was received by Great Britain.

On the same day on which Lord John Russell wrote Lord Cowley (May 6) he wrote to Lord Lyons,§ calling the United States "the northern portion of the late Union," and reiterating that Her Majesty's Government "cannot question the right of the Southern States to be recognized as a belligerent;" and in the House of Commons, on the same evening, he announced that the Attorney- and Solicitor-General, the Queen's Advocate, and the Government had come to the conclusion that the Southern Confederacy of America must be treated as a belligerent. On the same evening, Lord Palmerston said in the House of Commons,‖ "No one can regret more than I do the intelligence which has been received within the last few days from America; but, at the same time, any one must have been short-sighted and little capable of anticipating the probable course of human events, who had not for a long time foreseen events of a similar character to those we now deplore. From the commencement of this unfortunate quarrel between the two sections of the United States, it was evident that the causes of disunion were too deeply seated to make it possible that separation would not take place, and it was also obvious that passions were so roused on both sides as to make it highly improbable that such separation could take place without a contest."

Effect of recognition of a state of war.

A question was asked in the House of Commons on the 7th of May,¶ the next evening, as to the extent of the belligerent rights at sea which would be acquired by the South, to which Lord Palmerston declined to make answer "until the Government should be in a condition, after consulting its legal advisers, to make some distinct communication on the subject."

* Vol. I, page 36; see also same volume, page 48.
† Vol. I, page 49.
‡ British Blue Book on the Blockade, 1861, page 1.
§ Vol. I, pp. 36–37.
‖ Hansard's Debates, 3d series, Vol. CLXII, pp. 1622–23.
¶ Vol. IV, page 484.

Unfriendliness of Great Britain.

On the 9th of May,* Sir George Lewis announced that a Proclamation would be issued, stating "the general effect of the common and statute law on the matter;" and on the 10th, Lord Granville† repeated the declaration in the House of Lords. In the discussion there it was assumed by all the speakers that the insurgent Government might lawfully issue letters of marque.

Effect of recognition of a state of war.

It is believed by the United States that it was well known to Her Majesty's Government during all this time, that Mr. Adams was about to arrive with instruction from the new administration, and that he came possessed of its most confidential views on these important questions. On the 2nd May, Mr. Dallas wrote Mr. Seward thus:‡ "The solicitude felt by Lord John Russell as to the effect of certain measures represented as likely to be adopted by the President, induced him to request me to call at his private residence yesterday.* * * * I informed him that Mr. Adams had apprised me of his intention to be on his way hither in the steamship Niagara, which left Boston on the 1st May, and that he would probably arrive in less than two weeks, by the 12th or 15th instant. His Lordship acquiesced in the expediency of disregarding mere rumour, and waiting the full knowledge to be brought by my successor." The United States, for reasons already given, have no doubt that, before that interview, Her Majesty's Government had already decided upon their course of action. Mr. Adams did actually arrive in London on the evening of the 13th of May. The Queen's Proclamation of neutrality was issued on the morning of that day.

The Queen's Proclamation.

Uncertainty of Her Majesty's Government.

A careful examination of the published correspondence and speeches of Lord John Russell shows that Her Majesty's Government was at that time by no means certain that there was a war in the United States. On the 1st of May,§ he directs the Admiralty as to the course to be pursued with reference to the insurgent cruisers in the war which, he thinks, *may* "have already begun." On the 2d of May‖ he asks the Law Officers of the Crown what course the Government shall pursue. On the 1st of June, however, he is in doubt on the subject, and he writes to the Lords Commissioners of the Admiralty, informing them of the rules to be observed by the British naval¶ forces "in the contest *which appears to be imminent* between the United States and the so-styled Confederate States of North America." It would seem, therefore, that on the 1st of June, 1861, Her Majesty's Government regarded only as "imminent" the hostilities which Her Majesty's Proclamation of the 13th of the previous May alleged had "unhappily commenced between the United States of America and certain States styling themselves the Confederate States of America." In point of fact, Lord John Russell's despatch of the 1st of June described with fidelity the condition of things so far as then known in London; for at that time the intelligence of the exhilarating effect of the Queen's Proclamation upon the insurgents, and its depressing effect upon the Government and loyal population of the United States, had not reached Europe.

Effect of the Queen's Proclamation.

Whatever Lord John Russell, and his colleagues in the Government, who decided to counsel Her Majesty to issue the Proclamation of May 13, may have thought, the debates in Parliament removed any excuse for ignorance as to the effect of that instrument.

As early as the 29th of April, in the House of Commons, an opposition member had said that "there could be no doubt that, if the war should be continued in that country [the United States], *there would be thousands of privateers hovering about those coasts*;"** to which the Chancellor of the Exchequer (Mr. Gladstone) immediately replied: "All that relates to the dangers which may arise between British merchantships and American or other privateers * * * I shall pretermit, not because I presume to say or think that they are insignificant, but because I feel it my duty to address myself to those points which touch more directly and more practically [the Budget] the matter in hand."††

In a debate in the House of Lords, on the 10th of May, Lord Hardwicke‡‡ said that he "was anxious that the House should not enter too strong a protest against that which was a natural consequence of war, namely, that vessels should be fitted out by private individuals under letters of marque. That was, no doubt, privateering; but it did not by any means follow that privateering was piracy. He believed that if

* Vol. IV, page 484.
† Vol. IV, page 486.
‡ Vol. I, page 34.
§ Vol. I, page 33.
‖ Vol. IV, page 482.
¶ Vol. I, page 335.
** Hansard's Debates, 3d series, Vol. CLXII, page 1276.
†† Hansard's Debates, 3d series, Vol. CLXII, page 1277.
‡‡ Vol. IV, page 486.

Unfriendliness of Great Britain.

Effect of the Queen's Proclamation.

privateering ships were put in the hands of proper officers, they were not engaged in piracy any more than men-of-war. He thought that a feeble State engaged in a war with a powerful one, had a right to make use of its merchant-vessels for the purpose of carrying on the contest; and there was no violation of the law of nations in such a proceeding."

In the more elaborate discussion which followed on the 16th of the same month, in the House of Lords, the Lord Chancellor* said: "If, after the publishing of the present Proclamation, any English subject were to enter into the service of either of the belligerents on the other side of the Atlantic, there could be no doubt that the person so acting would be liable to be punished for a violation of the laws of his own country, and would have no right to claim any interference on the part of his Government to shield him from any consequences which might arise. There could, however, at the same time, be no doubt that, although he would be guilty of a breach of the laws of his own country, he ought not to be regarded as a pirate for acting under a commission from a State admitted to be entitled to the exercise of belligerent rights, and carrying on what might be called a *justum bellum*. Anybody dealing with a man under those circumstances as a pirate, and putting him to death, would, he contended, be guilty of murder."

The distinguished jurist, who then sat upon the woolsack, described in that speech one legal effect of this hastily issued Proclamation with undoubted correctness. It relieved Englishmen or foreigners in England, and Englishmen on insurgent cruisers carrying on war against the United States, from the penalties of a high class of felonies. Lord Lyndhurst, one of the most eminent predecessors of Lord Campbell, in an opinion in the House of Lords in 1853, cited with respect by Sir George Cornwall Lewis (himself one of Lord Palmerston's Cabinet), said: "If a number of British subjects were to combine and conspire together to excite revolt among the inhabitants of a friendly State, * * * and these persons, in pursuance of that conspiracy, were to issue manifestoes and proclamations for the purpose of carrying that object into effect; above all, *if they were to subscribe money for the purpose of purchasing arms to give effect to that intended enterprise*, I conceive, and I state with confidence, that such persons would be guilty of a misdemeanor, and liable to suffer punishment by the laws of this country, inasmuch as their conduct would tend to embroil the two countries together, to lead to remonstrances by the one with the other, and ultimately, it might be, to war. * * * Foreigners residing in this country, as long as they reside here under the protection of this country, are considered in the light of British subjects, or rather subjects of Her Majesty, and are punishable by the criminal law precisely in the same manner, to the same extent, and under the same conditions, as natural-born subjects of Her Majesty. * * * The offence of endeavouring to excite revolt against a neighbouring State is an offence against the law of nations. No writer on the law of nations states otherwise. But the law of nations, according to the decision of our greatest Judges, is part of the law of England."†

Mr. Bright's views.

The United States will close this branch of the examination by citing the language of Mr Bright, in the House of Commons, on the 13th of March, 1865.‡ "Going back nearly four years, we recollect what occurred when the news arrived of the first shot having been fired at Fort Sumter. That, I think, was about the 12th of April. Immediately after that time it was announced that a new Minister was coming to this country. Mr. Dallas had intimated to the Government that, as he did not represent the new President, he would rather not undertake anything of importance; but that his successor was on his way, and would arrive on such a day. When a man leaves New on a given day, you can calculate to about twelve hours when he will be in London. Mr. Adams, I think, arrived in London about the 13th of May, and when he opened his newspaper next morning he found the Proclamation of Neutrality, acknowledging the belligerent rights of the South. I say that the proper course to have taken would have been to wait till Mr. Adams arrived here, and to have discussed the matter with him in a friendly manner, explaining the ground upon which the English Government had felt themselves bound to issue that Proclamation, and representing that it was not done in any manner as an unfriendly act toward the United States' Government. But no precaution whatever was taken. It was done with unfriendly haste, and had this effect: that it gave comfort and courage to the conspiracy at Montgomery and at Richmond, and caused great grief and irritation among that portion of the people of America most

* Vol. IV, page 490.

† On Foreign Jurisdiction and the Extradition of Criminals; by the Right Hon. Sir George Cornwall Lewis, Bart., M.P., London, 1859, page 66.

‡ Vol. V, pp. 639–640.

strongly desirous of maintaining amicable and friendly relations between their country and England."

Unfriendliness of Great Britain.

The United States have made this review of the course pursued by Great Britain in recognizing the insurgents as belligerents, with no purpose of questioning the sovereign right of that Power to determine for itself whether the facts at that time justified such a recognition. Although the United States strenuously deny that the facts as they then were known to Her Majesty's Government did justify that Government in conferring upon the rebellious citizens of the United States the privilege of belligerents, and still less justified it in counselling France to do the same thing, yet they recognize and insist that (in the language of the President to Congress on the 6th day of December, 1869), a "nation is its own judge when to accord the rights of belligerency, either to a people struggling to free themselves from a Government they believe to be oppressive, or to independent nations at war with each other."*

The sovereign right to issue such a Proclamation not denied.

But while thus firmly insisting upon the sovereign rights of independent nationality, they also maintain "that the rightfulness of such an act depends upon the occasion and the circumstanees, and it is an act, like the sovereign act of war, which the morality of the public law and practice requires should be deliberate, seasonable, and just in reference to surrounding facts;"† and "they regard the concession of belligerency by Great Britain as a part of this case only so far as it shows the beginning and animus of that course of conduct which resulted so disastrously to the United States."‡

It was an unfriendly act;

Viewed in this light, the United States, with deep and unfeigned regret, have been forced to conclude, from all the circumstances, that Her Majesty's Government was actuated at that time by a conscious unfriendly purpose toward the United States.

And issued with an unfriendly purpose.

In the language of a continental publicist, "L'Angleterre a été bien pressée de faire usage de son droit strict pour constater solennellement que l'Union Américaine était ébranlée, et donner aux insurgés ce que le monde entier a considéré tout au moins comme un appui moral; * * l'acte a été posé la veille du jour où le nouvel Ambassadeur Américain, M. Adams, devait débarquer à Londres, et au moment où positivement les insurgés n'existaient pas comme puissance navale, où ils n'avaient de marine et de tribunaux de prise que sur le papier."§

M. Rolin-Jacquemyns on the Queen's Proclamation.

This precipitate and unfriendly act of Great Britain did not go forth alone. On the 6th of May, 1861, five days before the receipt of the authentic copy of the President's Proclamation, Lord John Russell instructed Lord Cowley, the British Ambassador at Paris, to ascertain whether the Imperial Government was disposed to make a joint endeavour with Her Majesty's Government "to obtain from each of the belligerents [*observe that the insurgents were styled "belligerents" seven days in advance of the Queen's Proclamation*] a formal recognition of the second and third Articles of the Declaration of Paris."

Unfriendly conduct of Great Britain as to the Declarations of the Congress of Paris

Lord Cowley, on the 9th of May, informed Lord John Russell that "the Imperial Government concurred entirely in the views of Her Majesty's Government, and would be prepared to join Her Majesty's Government in endeavouring to obtain of the belligerents a formal recognition of the second and third Articles of the Declaration of Paris."‖

This proposition to open direct negotiations with the insurgents was the second step in the joint action which had been agreed upon. For reasons which Her Majesty's Government is in a position to explain, but which can only be conjectured by the United States and by the Tribunal, care appears to have been taken to prevent the knowledge of it from reaching the Government of the United States.

On the receipt of the information from Lord Cowley, Lord John Russell prepared at once a draught of instructions to Lord Lyons, the British Minister at Washington, and, on the 16th of May, sent them to Lord Cowley to be submitted to the Emperor's Government.¶

On the next day, Lord Cowley replied that he had seen M. Thouvenel, the Minister for Foreign Affairs, and added: "M. Thouvenel had already written to M. Mercier [the French Minister at Washington] in the same terms as your Lordship proposes to

* Annual Message of the President to Congress, 1869.
† Mr. Fish to Mr. Motley, September 25, 1869. Vol. VI, page 4.
‡ Mr. Fish to Mr. Motley, May 15, 1869. Vol. VI, page 1.
§ De la neutralité de la Grande-Bretagne pendant la guerre civile Américaine d'aprés M. Mountagu Bernard, par G, Rolin-Jacquemyns, page 11.
‖ Vol. I, page 49.
¶ Vol. I, page 50.
** Vol. I, page 51.

Unfriendliness of Great Britain.

address your instructions to Lord Lyons. I need hardly add that his Excellency concurs entirely in the draught."**

Unfriendly conduct of Great Britain as to the Declarations of the Congress of Paris.

On the 18th of May, Lord John Russell hastened to send his instructions to Lord Lyons.* He told him "to encourage the Government" of the United States "in any disposition which they might evince to recognize the Declaration of Paris in regard to privateering;" and he added that "Her Majesty's Government do not doubt that they will, without hesitation, recognize the remaining Articles of the Declaration." He continued: "You will clearly understand that Her Majesty's Government cannot accept the renunciation of privateering on the part of the Government of the United States, if coupled with the condition that they should enforce its renunciation on the Confederate States, either by denying their right to issue letters of marque, or by interfering with the belligerent operations of vessels holding from them such letters of marque;" and he closed by instructing Lord Lyons to take such means as he might judge most expedient to transmit to Her Majesty's Consul at Charleston or New Orleans a copy of a previous dispatch of the same day, in order that it might be communicated to Mr. Jefferson Davis at Montgomery. Lord Lyons had no instructions to show to Mr. Seward the dispatch from which these citations have been made, and it evidently was contemplated that he should not exhibit it.

He was, however, to read to him the previous instructions of the same date referred to in that despatch, and to leave a copy with him, if desired. These previous instructions, numbered 136, may be found on the 107th page of the first of the accompanying volumes. It was not only to be shown to Mr. Seward, but a copy of it was to be shown to Mr. Jefferson Davis.* The attention of the Tribunal of Arbitration is, in this connection, particularly invited to the fact that these instructions, numbered 136, contain nothing indicating a design on the part of the British Government to put itself in communication with the insurgent authorities, nothing to induce Mr. Seward to think they were other than what, on their face, they purported to be, a communication from the Government of Great Britain to the Government of the United States, through the ordinary diplomatic channel.

The instructions to Lord Lyons might have been regarded as a cause of war.

It is not improbable that the Arbitrators may be of opinion that the use of the British Legation at Washington for such a purpose was an act which the United States would have been justified in regarding as a cause of war. It was, to say the least, an abuse of diplomatic privilege, and a violation, in the person of Her Majesty's Principal Secretary of State for Foreign Affairs, of the dues of neutrality which Her Majesty's Government was about to impose upon her subjects.

Before relating what Lord Lyons did, under these instructions, it is necessary to pause in order that the Tribunal may be informed what Mr. Seward and Mr. Adams had been doing in the same matter simultaneously with the proceedings which have been detailed.

Former negotiations regarding the Declaration of the Congress of Paris.

In the year 1854 the Government of the United States submitted to the principal maritime nations two propositions, soliciting their assent to them as permanent principles of international law. These propositions were, that free ships should make free goods; and that neutral property on board an enemy's vessel should not be subject to confiscation unless contraband of war.

Great Britain, being then at war with Russia, did not act upon these propositions; but in the Congress which assembled at Paris when the Peace of 1856 was made, Great Britain and the other nations, parties to the Congress, gave their assent to them, and to two other propositions—the abolition of privateering, and the necessity of efficiency to the legalization of a blockade. It was also agreed that the four propositions should be maintained as a whole and indivisible, and that the Powers who might accede to them should accede to them as such.†

Great Britain then joined in inviting the United States to give its adhesion to the four indivisible points. The Washington Cabinet of that day replied that the United States was willing to assent to all the propositions, except the one relating to privateering, as being, in fact, recognitions of principles which had always been maintained by them; but that they could not consent to abolish privateering without a further agreement to exempt private property from capture on the high seas; and they proposed to amend the declaration of the Congress of Paris in that sense, and offered to give their adhesion to it when so amended.

In January, 1857, the proposals of the United States not having been acted upon,

* Vol. I, page 51.

† 24th Protocol, April 16, 1856, Congress of Paris.

their Minister at London was directed to suspend negotiations until the new President, Mr. Buchanan, could examine the subject; and the suspension continued until after Mr. Lincoln was inaugurated.

Unfriendliness of Great Britain.

On the 24th April, 1861, less than two months after Mr. Lincoln's accession to power, Mr. Seward resumed the suspended negotiations by instructing Mr. Adams* (similar instructions being given to the Ministers of the United States to the other maritime powers) to give an unqualified assent to the four propositions, and to bring the negotiation to a speedy and satisfactory conclusion.

Former negotiations regarding the Declaration of the Congress of Paris.

Owing, probably, to the interruption in the communications between Washington and New York when the despatch of April 24 was written, Mr. Adams does not appear to have been able to communicate his instructions to Lord John Russell before the 21st of May. He then informed Lord John that he had received instructions to negotiate, which he would "submit to his consideration if there was any disposition to pursue the matter further." Lord John Russell "expressed the willingness of Great Britain to negotiate, but he seemed to desire to leave the subject in the hands of Lord Lyons, to whom he intimated that he had already transmitted authority to assent to any modification of the only point in issue which the Government of the United States might prefer."† He did not inform Mr. Adams that he also proposed to open negotiations with the insurgents, nor had Mr. Adams reason to suspect that fact.

Matters were thus suspended in London, to enable Lord Lyons to work out Lord John Russell's instructions at Washington and Richmond.

Lord Lyons received the despatches of the 18th of May on the 2nd of June,‡ and at once conferred with Mr. Mercier. It was agreed that they should try to manage the business so as to prevent "an inconvenient outbreak from the Government"§ of the United States. He then notified Earl Russell of what they proposed to do, and informed him of the instructions to Mr. Adams on this subject. He also intimated that it would be unreasonable to expect that the insurgents should abandon privateering, unless "in return for some great concession. What concession remained to be given except recognition of national independence?

It was not until the 15th of June that Lord Lyons and Mr. Mercier communicated the purport of their instructions to Mr. Seward in a joint interview, of which we have Mr. Seward's account‖ and Lord Lyons' account,¶ both dated the 17th of June. These accounts do not differ materially. The action as to the British Minister was this: Lord Lyons stated that he was instructed to read a despatch to Mr. Seward and to leave a copy with him if he desired. Mr. Seward refused to permit the despatch to be read officially, unless he could first have an opportunity to acquaint himself with it contents. Lord Lyons handed him Lord John Russell's No. 136, for the purpose of unofficial examination. Mr. Seward saw that it spoke of the insurgents as belligerents, and on that ground refused to permit it to be officially communicated to him. He added that he preferred to treat the question in London, and Lord Lyons left with him, unofficially, a copy of Lord John Russell's No. 136, in order that he might more intelligently instruct Mr. Adams.

Lord Lyons' interview with Mr. Seward.

The instructions thereupon written to Mr. Adams are in the same tone.** Mr. Seward expresses regret that the British and French Governments should have seen fit to take joint action in the matter; he refuses to admit that there are two belligerents parties to the struggle; he expresses regret that Great Britain did not await the arrival of Mr. Adams, before instructing Lord Lyons, as Mr. Adams' instructions covered the whole ground; but he nowhere manifests a knowledge of the purpose of Great Britain to enter into communications with the insurgents at Richmond. That was studiously concealed from him.

The negotiations were then transferred again to London, to the "profound surprise"†† of Mr. Adams. They were protracted there until the 19th of August, when Lord Russell informed Mr. Adams that Great Britain could only receive the assent of the United States to the Declaration of Paris, upon the condition that Her Majesty should not thereby "undertake any engagement which should have any bearing, direct or indirect," upon the insurrection. The United States declined to be put upon a different footing from that of the forty-two independent Powers enumerated in Lord Russell's No. 136 to Lord Lyons, whose assent had been received without conditions, and the negotiations dropped.

Termination of negotiations with United States.

The Arbitrators will thus perceive that Her Majesty's Government having recog-

Great Britain desire to legalize privateering.

* Vol. I, page 44.
† Vol. I, page 52.
‡ Vol. I, page 55.
§ Vol. I, page 56.
‖ Vol. I, page 60.
¶ Vol. 1, page 62.
** Vol. I, page 205.
†† Vol. 1, page 71.

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Great Britain desired to legalize privateering.

nized the insurgents as belligerents, felt itself bound to receive the assent of the United States to the declarations of the Congress of Paris only conditionally, so as to have no bearing upon letters of marque that might be issued by the insurgents. But they will also observe that the two steps of the recognition of belligerency and the invitations to assent to the second and third clauses in the declarations, were taken simultaneously, in accordance with a previous arrangement for joint action; and it is not impossible that they may come to the conclusion that Her Majesty's Government, when the insurgents were recognized as belligerents, contemplated that they would proceed to issue letters of marque, and intend to legalize those letters in the eye of British law, and to countenance the bearers of them in the destruction of American commerce.

Meanwhile Lord Lyons had not forgotten his instructions to secure the assent of Mr. Jefferson Davis to the second and third rules of the Declaration of Paris.

Negotiations at Richmond.

On the 5th of July he sent instructions to Mr. Bunch, British Consul at Charleston, to "obtain from the existing government in those [the insurgent] States securities concerning the proper treatment of neutrals."* He inclosed a copy of Lord Russell's No. 136. He advised Mr. Bunch not to go to Richmond, but to communicate through the Governor of the State of South Carolina; and he accompanied this with "a long private letter on the same subject." †The nature of that private letter may be gathered from what Mr. Bunch did.

He put himself and his French colleague at once in communication with a gentleman who was well qualified to serve his purpose, but who was not the Governor of South Carolina. They showed to this agent Lord John Russell's despatch to Lord Lyons, and Lord Lyons' official and private letters to Mr. Bunch, and they told him that the step to be taken was one of "very great significance and importance." The agent asked them whether they "were prepared to receive an official act which should be based upon their request, thus giving to the Confederate Government the advantage before the world of such an implied recognition as this would afford." †They replied that they "wished a spontaneous declaration;" "that to make this request the declared basis of the act would be to proclaim this negotiation, and the intense jealousy of the United States was such that this would be followed by the revocation of their exequaturs," which they wished to avoid; that "they could only look upon this step as the initiative toward a recognition, yet the object of their Government being to reach that recognition gradually, so as not to give good ground for a breach, this indirect way was absolutely necessary." And they added, "All we have a right to ask is that you shall not give publicity to this negotiation; that we nor our Governments shall be upon the record."‡

Their agent, being thus possessed of their views, went to Richmond, with Lord Lyons' letters and Lord Russell's despatch, and while there he secured the passage, in the Insurgent Congress, of resolutions partially draughted by Mr. Jefferson Davis, which declared their purpose to observe principles towards neutrals similar to the second and third rules of the Declaration of Paris; that blockades to be binding must be effectual; and that they "*maintained the right of privateering.*"§ In communicating this result to Lord Lyons, Mr. Bunch said; "*The wishes of Her Majesty's Government would seem to have been fully met, for, as no proposal was made that the Confederate Government should abolish privateering, it could not be expected that they should do so of their own accord, particularly as it is the arm upon which they most rely for the injury of the extended commerce of their enemy.*"‖ The United States think that the Tribunal of Arbitration will agree with Mr. Bunch, that it was not expected that the insurgents would abolish privateering.

The Tribunal of Arbitration cannot fail to observe that the propositions which were made in these negotiations to the Government of the United States were communicated to the Insurgents, while pains were taken to conceal from the United States the fact that negotiations were opened at Richmond; that Earl Russell refused to receive the assent of the United States to the Declaration of Paris, except upon conditions derogatory to their sovereignty; and that Lord Lyons was instructed to secure the assent of the Government of the United States to the four principles laid down by the Declaration of Paris, while he was instructed, as to the Insurgents, to secure their assent only to the second, third, and fourth propositions; and had no instructions to take steps to prevent privateering or to induce the insurgents to accept

* Vol. I, page 123.
† Manuscript in Department of State.
‡ Unpublished manuscript in the Department of State at Washington.
§ Vol. I, page 137.
‖ Vol. I, page 136.

the first rule in the Declaration of Paris, although it had been agreed that the rules should be maintained as a whole and indivisible, and that the Powers who might accede to them should accede to them as such. The practical effect of this diplomacy, had it been successful, would have been the destruction of the commerce of the United States (or its transfer to the British flag), and the disarming a principal weapon of the United States upon the ocean, should a continuation of this course of insincere neutrality unhappily force the United States into a war. Great Britain was thus to gain the benefit to its neutral commerce of the recognition of the second and third articles, the rebel privateer cruizers were to be protected, and their devastation legalized, while the United States were to be deprived of a dangerous weapon of assault upon Great Britain.

Unfriendliness of Great Britain.

Negotiations at Richmond.

When the whole story of these negotiations was understood by Mr. Adams, he wrote to his Government as follows :—*

Mr. Adams' comments.

"It now appears plainly enough that he wanted, from the first, to get the first Article of the Declaration of Paris out of the negotiation altogether, if he could. But he did not say a word of this to me at the outset, neither was it consistent with the position heretofore taken respecting the necessity of accepting the declaration 'pure and simple.' What I recollect him to have said on the 18th of May was, that it had been the disposition of his Government, as communicated to Lord Lyons, to agree upon almost any terms, respecting the first Article, that might suit the Government of the United States. When reminded of this afterward, he modified the statement to mean that the Article might be omitted altogether. It now turns out, if we may judge from the instructions, that he did not precisely say either the one thing or the other. Substantially, indeed, he might mean that the general law of nations, if affirmed between the two Governments, would, to a certain extent, attain the object of the first Article of the Declaration of Paris, without the adoption of it as a new principle. But he must have known, on the day of the date of these instructions, *which is the very day of his first conference with me,* and four days after the issue of the Queen's Proclamation, that the Government of the United States contemplated, in the pending struggle, neither encouraging privateers nor issuing letters of marque; hence that such a proposition would only complicate the negotiation for no useful purpose whatever. Besides which, it should be borne in mind that the effect, if adopted, would have been, instead of a simple adhesion to the Declaration of Paris, to render it necessary to reopen a series of negotiations for a modification of it between all the numerous parties to that instrument. Moreover, it is admitted by his Lordship that no powers had been given to make any convention at all—the parties could only agree. Yet, without such powers, what was the value of an agreement? For the Declaration of Paris was, by its very terms, binding only between parties who acceded to it as a whole. Her Majesty's Government thus placed themselves in the position of a party which proposes what it gives no authority to perform, and which negotiates upon a basis on which it has already deprived itself of the power to conclude.

"How are we to reconcile these inconsistencies? By the terms of the Queen's Proclamation his Lordship must have been aware that Great Britain had released the United States from further responsibility for the acts of its new-made belligerent that was issuing letters of marque, as well as from the possible offences of privateers sailing under its flag; and yet, when the Government of the United States comes forward and declares its disposition to accept the terms of the Declaration of Paris, pure and simple, the Government of Her Majesty cannot consent to receive the very thing that they heve been all along asking for, because it might possibly compel them to deny to certain privateers the rights which may accrue to them by virtue of their voluntary recognition of them as belonging to a belligerent Power. Yet it now appears that, on the 18th of May, the same Government was willing to reaffirm the law of nations, which virtually involved the very same difficulty on the one hand, while on the other it had given no powers to negotiate a new convention, but contemplated a simple adhesion to the old declaration on the part of the United States. The only way by which I can explain these various involutions of policy with a proper regard to Lord Russell's character for straightforwardness, which I have no disposition to impugn, is this: He may have instructed Lord Lyons prior to the 18th of May, the day of our first Conference. I certainly received the impression that he had done so. Or he may have written the paper before 1 o'clock of that day, and thus have referred to the act as a thing completed, though still within his power, in order to get rid of the proposition to negotiate directly here. Of that I do not pretend to judge. But neither in one case nor in the other was there the smallest intimation of a desire to put in any caveat whatever of the kind

* Vol. I, page 103.

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proposed in his last declaration. That seems to have been an afterthought, suggested when all other obstacles to the success of a negotiation had been removed.

"That it originated with Lord Russell I cannot credit consistently with my great respect for his character.

"That it was suggested after his proposed consultation with his colleagues, and by some member who had in view the defeat of the negotiation in the interests of the insurgents, I am strongly inclined to believe. The same influence may have been at work in the earlier stages of the business as well as the latest, and have communicated that uncertain and indirect movement which I have commented on, not less inconsistent with all my notions of his Lordship's character than with the general reputation of British policy."

Contrast between conduct of Great Britain toward the United States in the Trent affair and toward violators of British neutrality in the insurgent interest.

The partial purpose which was thus disclosed in the first official act of the Queen's Government, after the issue of the Proclamation of Neutrality, appears often in the subsequent conduct of that Government.

Thus, when, a few months later, an officer of the Navy of the United States had taken from the deck of a British vessel on the high seas four prominent agents travelling on an errand that, if successful, would result in disaster to the United States, against which they were in rebellion, the course of the British Cabinet indicated an unfriendliness so extreme as to approach to a desire for war. The news of this reached both countries at about the same time. In the United States, while there was some excitement and some manifestation of pleasure, Lord Lyons bears witness to the moderation of the tone of the press.* Mr. Seward immediately wrote Mr. Adams to acquaint him that the act of Captain Wilkes was unauthorized, and Mr. Adams communicated this fact to Lord Russell.†

The excitement in England, on the contrary, was intense, and was fanned into animosity by the press. Although without information as to the purpose of the Government of the United States, peremptory instructions were immediately sent to Lord Lyons to demand the release of the four gentlemen, and to leave Washington with all the members of the Legation, if the demand was not complied with in seven days.‡

In anticipation of a refusal, vessels of war were hurriedly fitted out at the naval stations, and troops were pressed forward to Canada. In the midst of this preparation Lord Russell received from Mr. Adams official information that the act had not been authorized by the Government of the United States; but this intelligence was suppressed, and public opinion was encouraged to drift into a state of hostility toward the United States. The arming continued with ostentatious publicity; the warlike preparations went on, and the peremptory instructions to Lord Lyons were neither revoked nor in any sense modified.

Contrast this conduct of Great Britain with reference to a violation of British sovereignty that had not been authorized or assumed by the Government of the United States, and that, to say the least, could be plausibly defended by reference to the decisions of Sir William Scott,§ with its course concerning the open, undisguised, oft-repeated, flagrant, and indefensible violations of British sovereignty by the agents of the insurgents in Liverpool, in Glasgow, in London, in Nassau, in Bermuda, it may almost be said wherever the British flag could give them shelter and protection. When the information as to the Florida was conveyed to Her Majesty's Principal Secretary of State for Foreign Affairs, he interposed no objection to her sailing from Liverpool.

* Lord Lyons to Earl Russell, Nov. 25, 1861. Blue Book No. 5, North America, 1862, page 10.

† Earl Russell to Lord Lyons. Blue Book No. 5, North America, 1862, page 11.

‡ Earl Russell to Lord Lyons. Blue Book No. 5, North America, 1862, page 3.

§ The Atlanta, 6 Charles Robinson's Reports, page 440. On the receipt of the news in London, the Times of November 28, 1861, published a leading article which contained some statements worthy of note. Among other things, it said:—"Unwelcome as the truth may be, it is nevertheless a truth, that we have ourselves established a system of International Law which now tells against us. In high-handed and almost despotic manner we have in former days claimed privileges over neutrals which have at different times banded all the maritime powers of the world against us. We have insisted even upon stopping the ships of war of neutral nations and taking British subjects out of them; and an instance is given by Jefferson in his Memoirs in which two nephews of Washington were impressed by our cruisers as they were returning from Europe, and placed as common seamen under the discipline of ships of war. We have always been the strenuous asserters of the rights of belligerents over neutrals, and the decisions of our courts of law, as they must now be cited by our Law Officers, have been in confirmation of these unreasonable claims which have called into being confederations and armed neutralities against us, and which have always been modified in practice when we were not supreme in our dominion at sea. Owing to these facts the authorities which may be cited on this question are too numerous und too uniform as to the right of search by belligerent ships of war over neutral merchant vessels to be disputed. * * *

"It is, and it always has been, vain to appeal to old folios and bygone authorities in justification of acts which every Englishman and every Frenchman cannot but feel to be injurious and insulting." See also the case of Henry Laurens, Dip. Cor. of Revolution, Vol. I, page 708, *et seq.*

When the overwhelming proof of the complicity of the Alabama was laid before him, he delayed to act until it was too late, and then, by his neglect to take notice of the notorious criminals, he encouraged the guilty Laird to construct the two rebel rams—the keel of one of them being laid on the same stocks from which the Alabama had just been launched.* When the evidence of the character and destination of those rams was brought to his notice, he held it for almost two months, although they were then nearly ready to go to sea, and then at first refused to stop them. Wiser and more just counsels prevailed four days later.† And when Mr. Adams, under instructions from his Government, transmitted to Earl Russell convincing proof of "a deliberate attempt to establish within the limits of this kingdom [Great Britain] a system of action in direct hostility to the Government of the United States,"‡ embracing "not only the building and fitting out of several ships of war under the direction of agents especially commissioned for the purpose, but the preparation of a series of measures under the same auspices for the obtaining from Her Majesty's subjects the pecuniary means essential to the execution of those hostile projects."‡ Lord Russell refused to see in the inclosed papers any evidence of those facts worthy of his attention, or of the action of Her Majesty's Government.§

Unfriendliness of Great Britain.

Contrast between conduct of Great Britain toward the United States in the Trent affair and toward violators of British neutrality in the insurgent interest.

It is not surprising that the consistent course of partiality towards the insurgents, which this Minister evinced throughout the struggle, should have drawn from Mr. Adams the despairing assertion that he was "permitting himself to be deluded by what I cannot help thinking the wilful blindness and credulous partiality of the British authorities at Liverpool. *From experience in the past I have little or no confidence in any application that may be made of the kind.*"‖ The probable explanation of Lord Russell's course is to be found in his own declaration in the House of Lords: "There may be one end of the war that would prove a calamity to the United States and to the world, and especially calamitous to the negro race in those countries, and that would be the subjugation of the South by the North."¶ He did not desire that the United States should succeed in their efforts to obtain that result. The policy of Great Britain, under his guidance, but for the exertions and sacrifices of the people of the United States, might have prevented it.

The insincere neutrality which induced the Cabinet of London to hasten to issue the Queen's Proclamation upon the eve of the day that Mr. Adams was to arrive in London, and which prompted the counselings with France, and the tortuous courses as to the Declaration of the Congress of Paris which have just been unraveled, has been well described by M. Rolin-Jacquemyns: "L'idéal du personnage *neutrarum partium*, c'est le juge qui, dans l'apologue de l'huître et les plaideurs, avale le contenu du mollusque, et adjuge les écailles aux deux belligérants. Il n'est d'aucun parti, mais il s'engraisse scrupuleusement aux dépens de tous deux. Une telle conduite de la part d'un grand peuple peut être aussi conforme aux précédents que celle du vénérable magistrat dont parle le fable. Mais quand elle se fonde sur une loi positive, sur une règle admise, c'est une preuve que cette règle est mauvaise, comme contraire à la science, à la dignité et à la solidarité humaine."**

M. Rolin-Jacquemyns on the British neutrality.

This feeling of personal unfriendliness towards the United States in the leading members of the British Government continued during a long portion or the whole of the time of the commission or omission of acts hereafter complained of.

Thus, on the 14th day of October, in the year 1861, Earl Russell†† said, in a public speech made at Newcastle: "We now see the two parties (in the United States) contending together, not upon the question of slavery, though that I believe was probably the original cause of the quarrel, not contending with respect to free trade and protection, but contending, as so many States in the Old World have contended, the one side for empire and the other for independence. [Cheers.] Far be it from us to set ourselves up as judges in such a contest. But I cannot help asking myself frequently, as I trace the progress of the contest, to what good end can it tend? [Hear! Hear!] Supposing the contest to end in the reunion of the different States; supposing that the South should agree to enter again the Federal Union with all the rights guaranteed to her by the Constitution, should we not then have debated over again the fatal question

Proof of unfriendly feeling of members of the British Cabinet.

* Mr. Dudley to Mr. Seward, Vol. II, page 315.
† Vol. II, page 363.
‡ Vol. I, page 562.
§ Vol. I, page 578.
‖ Vol. I, page 529.
¶ Vol. IV, page 535.
** De la Néutralité de la Grande Bretagne pendant la guerre civile Américaine, d'après M. Mountague Bernard, par G. Rolin-Jacquemyns, page 13.
†† London Times, October 16, 1861.

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of slavery, again provoking discord between North and South? * * * But, on the other hand, supposing that the Federal Government completely conquer and subdue the Southern States; supposing that be the result after a long military conflict and some years of civil war, would not the national prosperity of that country, to a great degree, be destroyed? * * * If such are the unhappy results which alone can be looked forward to from the reunion of these different parts of the North American States, is it not then our duty, though our voice, and, indeed, the voice of any one in this country, may be little listened to—is it not the duty of men who were so lately fellow-citizens—is it not the duty of men who profess a regard for the principles of Christianity—is it not the duty of men who wish to preserve in perpetuity the sacred inheritance of liberty, to endeavour to see whether this sanguinary conflict cannot be put an end to?"

Mr. Gladstone also spoke at Newcastle on the 7th day of October, 1862. It is scarcely too much to say that his language, as well as much of the other language of members of Her Majesty's Government herein quoted, might well have been taken as offensive by the United States. He said:* "We may have our own opinions about slavery; we may be for or against the South; but there is no doubt that Jefferson Davis and other leaders of the South have made an army. They are making, it appears, a navy; and they have made what is more than either—they have made a nation. [Loud cheers.] * * * We may anticipate with certainty the success of the Southern States so far as regards their separation from the North. [Hear! Hear!] I cannot but believe that that event is as certain as any event yet future and contingent can be." [Hear! Hear!]

In a debate in the House of Lords, on the 5th of February, 1863, Lord Russell said:†

"There is one thing, however, which I think may be the result of the struggle, and which, to my mind, would be a great calamity. That is the subjugation of the South by the North. If it were possible that the Union could be reformed; if the old feelings of affection and attachment toward it could be revived in the South, I, for one, would be glad to see the Union restored. If, on the other hand, the North were to feel that separation was finally decreed by the events of the war, I should be glad to see peace established upon those terms. But there may be, I say, one end of the war that would prove a calamity to the United States and to the world, and especially calamitous to the negro race in those countries, and that would be the subjugation of the South by the North."

In a spirited debate in the House of Commons on the 27th of March, 1863, Mr. Laird, the builder of the Alabama, and of the rams which were afterward seized, arose and attempted to justify his course in a speech which was received with prolonged cheering and satisfaction by a large portion of the House. Among other things which he then said, and which were received as expressive of the views and sentiments of those who cheered him, was the following:‡

"I will allude to a remark which was made elsewhere last night—a remark, I presume, applying to me, or to somebody else, which was utterly uncalled for. [Hear!] I have only to say that I would rather be handed down to posterity as the builder of a dozen Alabamas than as the man who applies himself deliberately to set class against class [loud cheers] and to cry up the institutions of another country, which, when they come to be tested, are of no value whatever, and which reduced liberty to an utter absurdity." [Cheers.]

Two years later, on the 13th day of March, 1865, the course of this member of the British House of Commons, and this extraordinary scene were thus noticed by Mr. Bright:§

"Then I come to the last thing I shall mention—to the question of the ships which have been preying upon the commerce of the United States. I shall confine myself to that one vessel, the Alabama. She was built in this country; all her munitions of war were from this country; almost every man on board her was a subject of Her Majesty. She sailed from one of our chief ports. She is reported to have been built by a firm in whom a member of this House was, and I presume is, interested. Now, Sir, I do not complain. I know that once, when I referred to this question two years ago, when my honourable friend, the member for Bradford, brought it forward in this House, the honourable member for Birkenhead [Mr. Laird] was excessively angry. I did not complain that the member for Birkenhead had struck up a friendship with

* London Times, October 9, 1862.
‡ London Times, March 28, 1863.
† Vol. IV, page 535.
§ Vol. V, page 641.

Unfriendliness of Great Britain.

Proof of unfriendly feeling of members of the British Cabinet.

Captain Semmes, who may be described as another sailor once was of similar pursuits, as being 'the mildest-mannered man that ever scuttled ship.' Therefore I do not complain of a man who has an acquaintance with that notorious person, and I do not complain, and did not then, that the member for Birkenhead looks admiringly upon the greatest example which men have ever seen of the greatest crime which men have ever committed. I do not complain even that he should applaud that which is founded upon a gigantic traffic in living flesh and blood, which no subject of this realm can enter into without being deemed a felon in the eyes of our law and punished as such. But what I do complain of is this: that the honourable gentleman, the member for Birkenhead, a magistrate of a county, a deputy-lieutenant—whatever that may be—a representative of a constituency, and having a seat in this ancient and honourable assembly—that he should, as I believe he did, if concerned in the building of this ship, break the law of his country, driving us into an infraction of International Law, and treating with undeserved disrespect the Proclamation of Neutrality of the Queen. I have another complaint to make, and in allusion to that honourable member. It is within your recollection that when on the former occasion he made that speech and defended his course, he declared that he would rather be the builder of a dozen Alabamas than do something which nobody had done. That language was received with repeated cheering from the opposition side of the House. Well, Sir, I undertake to say that that was at least a very unfortunate circumstance, and I beg to tell the honourable gentleman that at the end of the last session, when the great debate took place on the question of Denmark, there were many men on this side of the House who had no objection whatever to see the present Government turned out of office, for they had many grounds of complaint against them; but they felt it impossible that they should take the responsibility of bringing into office the right honourable member for Buckinghamshire or the party who could utter such cheers on such a subject as that."

On the 27th of March, 1863, in a debate in the House of Commons on the fitting out of these piratical cruizers, Lord Palmerston said:*

"There is no concealing the fact, and there is no use in disguising it, that whenever any political party, whether in or out of office in the United States, finds itself in difficulties, it raises a cry against England as a means of creating what, in American language, is called 'political capital.' That is a practice, of course, which we must deplore. As long as it is confined to their internal affairs, we can only hope that, being rather a dangerous game, it will not be carried further than is intended. When a Government or a large party excite the passions of one nation against another, especially if there is no just cause, it is manifest that such a course has a great tendency to endanger friendly relations between the two countries. We understand, however, the object of these proceedings in the present instance, and therefore we do not feel that irritation which might otherwise be excited. But if this cry is raised for the purpose of driving Her Majesty's Government to do something which may be contrary to the laws of the country, or which may be derogatory to the dignity of the country, in the way of altering our laws for the purpose of pleasing another Government, then all I can say is that such a course is not likely to accomplish its purpose."

On the 30th of June, 1863, Mr. Gladstone, in the course of a long speech, said:†

"Why, Sir, we must desire the cessation of this war. No man is justified in wishing for the continuance of a war unless that war has a just, an adequate, and an attainable object, for no object is adequate, no object is just, unless it also be attainable. We do not believe that the restoration of the American Union by force is attainable. I believe that the public opinion of this country is unanimous upon that subject. [No!] Well, almost unanimous. I may be right or I may be wrong—I do not pretend to interpret exactly the public opinion of the country. I express in regard to it only my private sentiments. But I will go one step further, and say I believe the public opinion of this country bears very strongly on another matter upon which we have heard much, namely, whether the emancipation of the negro race is an object that can be legitimately pursued by means of coercion and bloodshed. I do not believe that a more fatal error was ever committed than when men—of high intelligence, I grant, and of the sincerity of whose philanthropy I, for one, shall not venture to whisper the smallest doubt—came to the conclusion that the emancipation of the negro race was to be sought, although they could only travel to it by a sea of blood. I do not think there is any real or serious ground for doubt as to the issue of this contest."

* Vol. IV, page 530.

† Vol. V, page 666.

Unfriendliness of Great Britain.

Proof of unfriendly feeling of members of the British Cabinet.

In the same debate, Lord Palmerston, with an unsual absence of caution, lifted the veil that concealed his feelings, and said:*

"Now, it soems to me that that which is running in the head of the honourable gentleman (Mr. Bright), and which guides and directs the whole of his reasoning, is the feeling, although perhaps disguised to himself, that the Union is still in legal existence; that that there are not in America two belligerent parties, but a legitimate government and a rebellion against that government. Now, that places the two parties in a very different position from that in which it is our duty to consider them."

As late as the 9th of June, 1864, Earl Russell said† in the House of Lords:

"It is dreadful to think that hundreds of thousands of men are being slaughtered for the purpose of preventing the Southern States from acting on those very principles of independence which in 1776 were asserted by the whole of America against this country. Only a few years ago the Americans were in the habit, on the 4th of July, of celebrating the promulgation of the Declaration of Independence, and some eminent friends of mine never failed to make eloquent and stirring orations on those occasions. I wish, while they keep up a useless ceremony—for the present generation of Englishmen are not responsible for the War of Independence—that they had inculcated upon their own minds that they should not go to war with four millions, five millions, or six millions of their fellow-countrymen who want to put the principles of 1776 into operation as regards themselves."

The United States have thus presented for the consideration of the Tribunal of Arbitration the publicly expressed sentiments of the leading members of the British Cabinet of that day. Lord Palmerston was the recognized head of the Government. Earl Russell, who, at the commencement of the insurrection, sat in the House of Commons as Lord John Russell, was during the whole time Her Majesty's Principal Secretary of State for Foreign Affairs, specially charged with the expression of the views and feelings of Her Majesty's Government on these questions. Both were among the oldest and most tried statesmen of Europe. Mr. Gladstone, the present distinguished chief of the Government, was then the Chancellor of the Exchequer; and Lord Campbell, well known in both hemispheres as a lawyer and as a lover of letters, sat upon the Woolsack when the contest began. Lord Westbury, who succeeded him in June 1861, was the chief counsellor of the policy pursued by the British Government. These gentlemen were entitled to speak the voice of the governing classes of the Empire; and the United States have been forced with sincere regret to the conviction that they did express the opinions and wishes of much of the cultivated intellect of Great Britain.

The United States would do great injustice, however, to the sentiments of their own people did they fail to add, that some of the most eloquent voices in Parliament were raised in behalf of the principles of freedom which they represented in the contest; and that members of the governing classes, most elevated in rank and distinguished in intellect, and a large part of the industrial classes, were understood to sympathize with them. They cannot, however, shut their eyes to the fact, and they must ask the Tribunal of Arbitration to take note, that, with the few exceptions referred to, the leading statesmen of that country, and nearly the whole periodical press and other channels through which the British cultivated intellect is accustomed to influence public affairs, sustained the course of the existing Government in the unfriendly acts and omissions which resulted so disastrously to the United States. The United States complain before this Tribunal only of the acts and omissions of the British Government. They refer to the expressions and statements from unofficial sources as evidence of a state of public opinion, which would naturally encourage the members of that Government in the policy and acts of which the United States complain.

It is not worth while to take up the time of the Tribunal of Arbitration, by an inquiry into the reasons for this early and long-continued unfriendliness of the British Government, toward a Government which was supposed to be in sympathy with its political and moral ideas, and toward a kindred people with whom it had long maintained the attitude of friendship. They may have been partly political, as expressed in Parliament by an impetuous member, who spoke of the bursting of the bubble republic,‡ (for which he received a merited rebuke from Lord John Russell)§; or they may have been those declared without rebuke at a later date in the House of Commons by the present Marquis of Salisbury, then Lord Robert Cecil, when he said‖ that

* Vol. V, page 695.
† Vol. V, page 507.
‡ Hansard, 3d series, Vol. CLXIII, page 134.
§ Hansard, 3d series, Vol. CLXIII, page 276.
‖ Vol. V, page 671.

"they [the people of the Southern States] were the natural allies of this country, as great producers of the articles we needed and great consumers of the articles we supplied. The North, on the other hand, kept an opposition-shop in the same departments of trade as ourselves;" or they may have been those announced by Earl Russell last year, when saying,* "It was the great object of the British Government to preserve for the subject the security of trial by jury, and for the nation the legitimate and lucrative trade of ship-building."

Unfriendliness of Great Britain.

Proof of unfriendly feeling of members of the British Cabinet.

Without pursuing an inquiry in this direction, which, at the best, would be profitless, the United States invite the careful attention of the Arbitrators to the facts which appear in the previous pages of this case. In approaching the consideration of the third branch of the subjects herein discussed, in which the United States will endeavour to show that Great Britain failed in her duties toward the United States—as those duties will be defined in the second branch thereof—the Tribunal of Arbitration will find in these facts circumstances which could not but influence the minds of the members of Her Majesty's Government, and induce them to look with disfavour upon efforts to repress the attempts of British subjects, and of other persons, to violate the neutrality of British soil and waters in favour of the rebels.

Conclusions.

Some of the members of the British Government of that day seem to have anticipated the conclusion which must inevitably be drawn from their acts, should the injuries and wrongs which the United States have suffered ever be brought to the adjudication af an impartial tribunal.

Lord Westbury (appointed Lord High Chancellor on the death of Lord Campbell, in June 1861), declared in the House of Lords, in 1868, that "*the animus with which the neutral Powers acted was the only true criterion.* The neutral Power might be mistaken; it might omit to do something which ought to be done, or direct something to be done which ought not to be done; but the question was whether, from beginning to end, it had acted with sincerity and with a real desire to promote and preserve a spirit of neutrality. * * * He [Mr. Seward] said, in effect, 'Whether you were a sincere and loyal neutral was the question in dispute, and that must be judged from a view of the whole of your conduct. I do not mean to put it merely upon the particular transaction relative to the Alabama. I insist upon it in that case undoubtedly; but I contend that, from beginning to end, you had an undue preference and predilection for the Confederate States; that you were therefore not loyal in your neutrality; and I appeal to the precipitancy with which you issued your Proclamation, thereby involving a recognition of the Confederate States as a belligerent Power, as a proof of your insincerity and want of impartial attention.' And now, could we prevent him from using that document for such a purpose? How unreasonable it was to say, when you go into arbitration, you shall not use a particular document, even as an argument upon the question whether there was sincere neutrality or not."†

Such is the use which the United States ask this Tribunal to make of the foregoing evidence of the unfriendliness and insincere neutrality of the British Cabinet of that day. When the leading members of that Cabinet are thus found counselling in advance with France to secure a joint action of the two Governments, and assenting to the declaration of a state of war between the United States and the insurgents, before they could possibly have received intelligence of the purposes of the Government of the United States; when it is seen that the British Secretary of State for Foreign Affairs advises the representatives of the insurgents as to the course to be pursued to obtain the recognition of their independence, and at the same time refuses to await the arrival of the trusted representative of the United States before deciding to recognize them as belligerents; when he is found opening negotiations through Her Majesty's diplomatic representative at Washington with persons in rebellion against the United States; when various members of the British Cabinet are seen to comment upon the efforts of the Government of the United States to suppress the rebellion in terms that indicate a strong desire that those efforts should not succeed, it is not unreasonable to suppose that, when called upon to do acts which might bring about results in conflict with their wishes and convictions, they would hesitate, discuss, delay, and refrain—in fact, that they would do exactly what in the subsequent pages of this paper it will appear that they did do.

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* Earl Russell's Speeches and Despatches, Vol. II, page 266.

† Hansard's Parliamentary Debates, 3d series, Vol. CXCI, pp. 347–348.

PART III.

Duties of a Neutral.

THE DUTIES WHICH GREAT BRITAIN, AS A NEUTRAL, SHOULD HAVE OBSERVED TOWARD THE UNITED STATES.

The Queen's Proclamation a recognition of obligation under the law of nations.

THE second branch of the subject, in the order in which the United States desire to present it to the Tribunal of Arbitration, involves the consideration of the duties which Great Britain, as a neutral, should have observed toward the United States during the contest. However inconsiderately and precipitately issued, the Proclamation of Neutrality recognized the obligation, under the law of nations, to undertake the performance of those duties, and it becomes important to have a correct understanding of their character.

Great Britain has recognized its obligations in various ways.

In attempting to define these duties it is natural, first, to endeavour to ascertain whether Great Britain itself has, by legislative or official acts, recognized any such obligations; and next, to inquire whether the canons of international law, as expounded by publicists of authority, demand of a neutral the observance of any other or broader rules than have been so recognized. The United States will pursue the examination in this order.

Recognized by the Foreign Enlistment Act of 1819.

They find, first, an evidence of Great Britain's conception of its duties as a neutral in the Foreign Enlistment Act which was enacted in 1819, and was in force during the whole of the Southern rebellion.

Municipal laws designed to aid a Government in performance of international duties.

It must be borne in mind, when considering the municipal laws of Great Britain, that, whether effective or deficient, they are but machinery to enable the Government to perform the international duties which they recognize, or which may be incumbent upon it from its position in the family of nations. The obligation of a neutral state to prevent the violation of the neutrality of its soil is independent of all interior or local law. The municipal law may and ought to recognize that obligation; but it can neither create nor destroy it, for it is an obligation resulting directly from international law, which forbids the use of neutral territory for hostile purposes.*

The local law, indeed, may justly be regarded as evidence, as far as it goes, of the nation's estimate of its international duties; but it is not to be taken as the limit of those obligations in the eye of the law of nations.

History of Foreign Enlistment Act of 1819.

It is said by Lord Tenterden, the distinguished Secretary of the British High Commissioners, in his memorandum attached to the Report† of Her Majesty's Commissioners upon the neutrality law,‡ that the neutrality law of the United States formed the foundation of the neutrality law of England.§ "The Act for the amendment of the neutrality laws," he says, "was introduced by Mr. Canning on the 10th of June, 1819, in an eloquent speech, in the course of which he said, 'It surely could not be forgotten that, in 1793, this country complained of various breaches of neutrality (though much inferior in degree to those now under consideration) committed on the part of subjects of the United States of America. What was the conduct of that nation in consequence? Did it resent the complaint as an infringement of its independence? Did it refuse to take such steps as would insure the immediate observance of neutrality? Neither. In 1794, immediately after the application from the British Government, the Legislature of the United States passed an Act prohibiting, under heavy penalties, the engagement of American citizens in the armies of any belligerent Power. Was that the only instance of the kind? It was but last year that the United States passed an Act by

* Ortolan, Diplomatie de la mer, Vol. II, page 215.
† Vol. IV, page 79.
‡ Vol. IV, page 93, Appendix No. 3, by Mr. Abbott, now Lord Tenterden.
§ Vol. IV, page 124.

Duties of a Neutral.

History of Foreign Enlistment Act of 1819.

which the Act of 1794 was confirmed in every respect, again prohibiting the engagement of their citizens in the service of any foreign Power, and pointing distinctly to the service of Spain or the South American Provinnes."* It appears from the whole tenor of the debate which preceded the passage of the Act that its sole purpose was *to enable the Executive to perform with fidelity the duties towards neutrals which were recognized as imposed upon the Government by the Law of Nations.*

Great Britain bound to perform the duties recognized by that Act.

The United States assume that it will be conceded that Great Britain was bound to perform all the duties of a neutral toward the United States which are indicated in this statute. If this obligation should be denied, the United States beg to refer the Tribunal of Arbitration to the declaration of Earl Russell in his communication to Mr. Adams of August 30, 1865, where he† "lays down with confidence the following proposition:" "That the Foreign Enlistment Act is intended in aid of the *duties* * * of a neutral nation."‡ They also refer to Lord Palmerston's speech in the House of Commons, July 23, 1863,§ in which he says: "The American Government have a distinct right to expect that a neutral will enforce its municipal law, if it be in their favour."

Indeed, Great Britain is fully committed to this principle in its dealings with other Powers. Thus, during the Crimean War, Her Majesty's Government, feeling aggrieved at the acts of the Prussian Government in tolerating the furnishing of arms and other contraband of war to Russia, were advised by the Law Officers of the Crown that they might justly remonstrate against violations of Prussian law.‖

After these declarations by British authorities, it will scarcely be contended that the United States had not the right to expect, and to demand of Great Britain the performance of the measure of duty recognized by existing municipal laws, however inadequate those laws might be as an expression of international obligations.

Duties recognized by Foreign Enlistment Act of 1819.

The British Foreign Enlistment Act of 1819 consisted of twelve sections, written in the verbiage which the customs of England make necessary in the laws providing for the punishment of crimes. These sections relate to four distinct subjects. First, they repeal all former statutes; secondly, they define the acts which the British legislators regarded as acts which a neutral ought not to permit to be done within its jurisdiction; thirdly, they provide modes for prosecuting persons found guilty of committing the acts which are prohibited by the statute, and they indicate the punishments which may be inflicted upon them when convicted; fourthly, they exempt certain parts of the Empire from the operation of the statute.¶

This Tribunal need take no notice of the penal portions of the statute, which affect only the relations between the State and those who owe allegiance to its laws by reason of residence within its territory. The United States will therefore confine themselves to attempting to deduce from the statute the definitions of the principles, and the duties, which are there recognized as obligatory on the nation in its relations with other Powers. The adjudicated cases often disregard the distinction between the duties of a neutral, however defined, and the proceedings in its courts against persons charged as criminals for alleged violations of its laws for the preservation of neutrality. Even some of the best publicists, in referring to this class of decisions, have not always remembered that, while in the former we have only to do with principles of public law, in the latter we are dealing with the evidence necessary for the conviction of an offender. Bearing this distinction in mind, the Tribunal of Arbitration may be able to reconcile many apparently conflicting authorities, and arrive at just conclusions.

The acts which, if committed within the territory of the neutral, are to be regarded as violations of its international duties, are enumerated in the second, fifth, sixth, seventh, and eighth sections of the statute.

Translating this statutory language into the expressions commonly employed by publicists and writers on International Law, this statute recognizes the following as acts which ought to be prevented within neutral territory during time of war:—

1. The recruitment of subjects or citizens of the neutral, to be employed in the military or naval service of a foreign Government, or of persons assuming to exercise the powers of government over any part of foreign territory; or the acceptance of a commission, warrant, or appointment for such service by such persons; or the enlisting or agreeing to enlist in such service; the act in each case being done without the leave or license of the Sovereign.

* Vol. IV, pages 123–124.
† Vol. III, page 549.
‡ Vol. III, page 550.
§ Vol. V, page 695.
‖ Earl Granville to Count Bernstorff, September 15, 1870.
¶ Vol. IV, page 86.

Duties of a Neutral.

Duties recognized by Foreign Enlistment Act of 1819.

2. The receiving on board a vessel, for the purpose of transporting from a neutral port, persons who may have been so recruited or commissioned; or the transporting such persons from a neutral port. Authority is given to seize the vessels violating these provisions.

3. The equipping, furnishing, fitting out, or arming a vessel, with intent or in order that it may be employed in the service of such foreign Government, or of persons assuming to exercise the powers of Government over any part of a foreign country, as a transport or store-ship, or to cruize or carry on war against a Power with which the neutral is at peace; or the delivering a commission for such vessel, the act in each case being done without the leave or license of the Sovereign.

4. The augmenting the warlike force of such a vessel of war by adding to the number of guns, by changing those on board for other guns, or by the addition of any equipment of war, if such vessel at the time of its arrival in the dominions of the neutral was a vessel of war in the service of such foreign Government, or of such persons, the act being done without the leave or license of the Sovereign.*

Royal Commission to revise Foreign Enlistment Act of 1819.

During the insurrection, as will be seen hereafter, this Act was, by the construction of the English courts, stripped of its effective power. The United States repeatedly and in vain invited Her Majesty's Government to amend it. Although these calls proved abortive during the contest with the South, the appalling magnitude of the injury which had been inflicted by British-built and British-manned cruizers upon the commerce and industry of a nation with which Great Britain was at peace, appears to have awakened its senses, and to have impelled it to take some steps toward a change. In January 1867 the Queen's Commission was issued to some of the most eminent of the British lawyers and judges, authorising them to inquire into and consider the character, working, and effect of the laws of the Realm, available for the enforcement of neutrality, during the existence of hostilities between other States with whom Great

* It may interest the members of the Tribunal of Arbitration to see in this connection an abstract of the acts which are penal by the United States' Neutrality Law of 1818. The law itself will be found in Vol. IV, pages 90–92. The abstract is taken from President Grant's Proclamation of Neutrality in the late Franco-German war, dated October 8, 1870.

"By the Act passed on the 20th day of April, A.D. 1818, commonly known as the 'Neutrality Law,' the following acts are forbidden to be done, under severe penalties, within the territory and jurisdiction of the United States, to wit:—

"1. Accepting and exercising a commission to serve either of the said belligerents by land or by sea against the other belligerent.

"2. Enlisting or entering into the service of either of the said belligerents as a soldier or as a marine or seaman on board of any vessel of war, letter of marque, or privateer.

"3. Hiring or retaining another person to enlist or enter himself in the service of either of the said belligerents as a soldier or as a marine or seaman on board of any vessel of war, letter of marque, or privateer.

"4. Hiring another person to go beyond the limits or jurisdiction of the United States with intent to be enlisted as aforesaid.

"5. Hiring another person to go beyond the limits of the United States with the intent to be entered into service as aforesaid.

"6. Retaining another person to go beyond the limits of the United States with intent to be enlisted as aforesaid.

"7. Retaining another person to go beyond the limits of the United States with intent to be entered into service as aforesaid. (But the said Act is not to be construed to extend to a citizen or subject of either belligerent who, being transiently within the United States, shall, on board of any vessel of war, which, at the time of its arrival within the United States, was fitted and equipped as such vessel of war, enlist or enter himself, or hire, or retain another subject or citizen of the same belligerent, who is transiently within the United States, to enlist or enter himself to serve such belligerent on board such vessels of war, if the United States shall then be at peace with such belligerent.)

"8. Fitting out and arming, or attempting to fit out and arm, or procuring to be fitted out and armed, or knowingly being concerned in the furnishing, fitting out, or arming of any ship or vessel, with intent that such ship or vessel shall be employed in the service of either of the said belligerents.

"9. Issuing or delivering a commission within the territory or jurisdiction of the United States for any ship or vessel to the intent that she may be employed as aforesaid.

"10. Increasing or augmenting, or procuring to be increased or augmented, or knowingly being concerned in increasing or augmenting, the force of any ship of war, cruiser, or other armed vessel, which at the time of her arrival within the United States was a ship of war, cruiser, or armed vessel in the service of either of the said belligerents, or belonging to the subjects or citizens of either, by adding to the number of guns of such vessels, or by changing those on board of her for guns of a larger calibre, or by the addition thereto of any equipment solely applicable to war.

"11. Beginning or setting on foot or providing or preparing the means for any military expedition or enterprise to be carried on from the territory or jurisdiction of the United States against the territories or dominions of either of the said belligerents."

The Tribunal of Arbitration will also observe that the most important part of the American Act is omitted in the British Act, namely, *the power conferred by the Eighth Section on the Executive to take possession of and detain a ship without judicial process, and to use the military and naval forces of the Government for that purpose, if necessary.* Earl Russell is understood to have determined that the United States should, in no event, have the benefit of such a summary proceeding, or of any remedy that would take away the trial by jury.—*Speeches and Dispatches of Earl Russell*, Vol. II, page 266.

Britain might be at peace, and to inquire and report whether any and what changes ought to be made in such laws for the purpose of giving to them increased efficiency, and bringing them into full conformity with international obligations.*

Duties of a Neutral.

Royal Commission to revise Foreign Enlistment of 1819.

That Commission held twenty-four sittings, and finally reported that the old Foreign Enlistment Act of 1819 was capable of improvement, and might be made more efficient by the enactment of several provisions set forth in the report.†

Report of that Commission.

Among other things, the Commission recommended that it be made a statutory offence to "fit out, arm, *dispatch* or *cause to be dispatched, any ship, with intent or knowledge* that the same shall or will be employed in the military or naval service of any foreign Power in any war then being waged by such Power against the subjects or property of any foreign belligerent Power with whom Her Majesty shall not then be at war."‡ It was also proposed to make it a statutory offence to "*build or equip any ship with the intent that the same shall, after being fitted out and armed, either within or beyond Her Majesty's Dominions, be employed as aforesaid*;"§ and it was proposed that the Executive should be armed with summary powers similar to those conferred upon the President of the United States by the eighth section of the Act of 1818. It was further proposed to enact that "in time of war no vessel employed in the military or naval service of any belligerent, which shall have been built, equipped, fitted out, armed, or dispatched contrary to the enactment, should be admitted to any port of Her Majesty's Dominions."‖

The Tribunal of Arbitration will not fail to observe that these recommendations were made by a board composed of the most eminent judges, jurists, publicists, and statesmen of the Empire, who had been in public life and had participated in the direction of affairs in Great Britain during the whole period of the Southern rebellion; and that they were made under a commission which authorized these distinguished gentlemen to consider and report what changes ought be made in the laws of the Kingdom, for the purpose of giving to them in increased efficiency, *and bringing them into full conformity with the international obligations of England.* The Tribunal of Arbitration will search the whole of that report, and of its various appendices, in vain, to find any indication that that distinguished body imagined, or thought, or believed that the measures which they recommended were not "in full conformity with international obligations." On the contrary, the Commissioners say that, so far as they can see, the adoption of the recommendations will bring the municipal law into full conformity with the international obligations.¶ Viewing their acts in the light of their powers and of their instructions, the United States feel themselves justified in asking the Tribunal to assume that that eminent body regarded the acts which they proposed to prevent by legislation, as forbidden by International Law.

The Foreign Enlistment Act of 1870.

The report of the Commissioners was made in 1868, but was not acted upon until after the breaking out of the late war between Germany and France. On the 9th of August, 1870, Parliament passed "An Act to regulate the conduct of Her Majesty's subjects during the existence of hostilities between foreign States with which Her Majesty is at peace." This Act, which may be found in Volume VII,** embodies the recommendations of the Commissioners which are cited above, except that which excludes a ship which has been illegally built or armed &c., &c., from Her Majesty's ports.

Judicial construction of that Act.

Soon after the enactment of this statute, a vessel called the "International," was proceeded against for an alleged violation of its provisions. The case came before Sir Robert J. Phillimore, one of Her Majesty's Commissioners who signed the report in 1868. In rendering his decision on the 17th January, 1871, he said: "This statute, passed during the last session, under which the authority of this Court is now for the first time evoked, is, in my judgment, very important and very valuable; strengthening the hands of Her Majesty's Government, and *enabling them to fulfil more easily than heretofore that particular class of international obligations which may arise out of the conduct of Her Majesty's subjects toward belligerent Foreign States, with whom Her Majesty is at peace.*††

* Vol. IV, page 79.
† Vol. IV, page 80.
‡ Vol. IV, pp. 80–81.
§ Vol. IV, page 81.
‖ Vol. IV, page 82.
¶ Vol. IV, page 82.
** Vol. VII, page 1.
†† London Times, January 18, 1871. See also Admiralty and Ecclesiastical Reports, Vol. III, page 332. See also Report of the Debate on the Foreign Enlistment Act in the House of Commons, in the London Times of August 2, 1870.

Duties of a Neutral.

Judicial construction of that Act.

These eminent commissioners and this distinguished jurist have chosen their words with the precision which might have been expected of them. They declare that, in the excution of the commission, they have only sought to bring the law of England into harmony with the law of nations. Their functions ceased when they recommended certain charges with that object in view. Parliament then took up the work and adopted their suggestions. Then, as if to prevent all misapprehension, one of the commissioners, acting as a judge, held that the act of 1870 is intended to bring the law of the realm into harmony with the international duties of the Sovereign.

International law is a part of the common law of England.

The United States confidently submit that the new provisions, inserted in the act of 1870, were intended, at least as against the British Government, as a re-enactment of the law of nations, as understood by the United States to be applicable to the cases of the Alabama, and other ships of war constructed in England for the use of the insurgents.

They conceive that Great Britain is committed to the doctrines therein stated, not merely by the articles of International Law expressed in its statutes, but also by the long-settled Common Law of England confirmed by Acts of Parliament.

The Act of 7 Anne, ch. 12, enacted in consequence of the violation of the law of nations by the arrest for debt of the Ambassador of the Czar, Peter the Great, in London, is prominent in the history of the legislation of Great Britain.*

Lord Mansfield, commenting on this Act in the case of Triquet *v.* Buth, 3 Burrow's Reports, p. 148, says that this act was but declaratory. All that is new in this Act is the clause which gives a summary jurisdiction for the punishment of the infraction of the law. He further remarks that the Ambassador who had been arrested could have been discharged on motion. This Act of Parliament was passed as an apology from the nation. It was sent to the Czar, finely illuminated, by an Ambassador Extraordinary, who made the national excuses in an oration. "The Act was not occasioned by any doubt whether the law of nations, particularly the part relative to public Ministers, was not part of the law of England, and not intended to vary an iota from it." Lord Mansfield further says, in reference to the case of Brevot *v.* Barbot, that Lord Talbot declared "that the law of nations, in its full extent, was part of the law of England;" and adds, "I remember, too, Lord Hardwick declared his opinion to the same effect, and denying that Lord Chief Justice Holt ever had any doubt as to the law of nations being part of the law of England, upon the occasion of the arrest of the Russian Ambassador."†

To the same effect is the remark of Lord Tenterden, when he says "that the Act of Anne is only declaratory of the common law. It must therefore be construed according to the common law, of which the law of nations must be deemed a part."‡

Blackstone states the doctrine in general terms as follows: "The law of nations is a system of rules, deducible by natural reason, and established by universal consent among the civilized inhabitants of the world, in order to decide all disputes, to regulate all ceremonies and civilities, and to insure the observance of justice and good faith, in that intercourse which must frequently occur between two or more independent States, and the individuals belonging to each.

* * * * * * * *

"In arbitrary States this law, wherever it contradicts, or is not provided for by the municipal law of the country, is enforced by the Royal Power; but since in England no Royal Power can introduce a new law or suspend th eexecution of the old, therefore the law of nations (whenever any question arises which is properly the object of its jurisdiction) is here adopted in its full extent by the common law of the land. And those Acts of Parliament which have from time to time been made to enforce this universal law, or to facilitate the execution of its decisions, are not to be considered as introductive of any new rule, but merely as declaratory of the old fundamental constitutions of the Kingdom; *without which it must cease to be a part of the civilized world.*"§

In the presence of these authorities it cannot be doubted that the law of nations enters integrally into the common law of England, and that any enactment by Parliament on this point derives force only from its conformity with the law of nations, having no virtue beyond that, except in so far as such enactment may afford means for the better enforcement of that law within the realm of England.

That eminent judge and jurist, Lord Stowell, even goes so far as to say that, while

* See Phillimore's International Law, Vol. II, ch. 8, section 194.
† See further 1 Black. Com., pp. 43, 354; 1 Woodson's Lectures, p. 31.
‡ Novillo *v.* Toogood, 1 Barnwell and Creswell's Reports, 562.
§ Blackstone's Com., Vol. IV, ch. 5. See also Lord Lyndhurst's opinion, ante page 16.

an Act of Parliament can affirm the law of nations, it cannot contradict it or disaffirm it to any effect as respects foreign Governments.*

Duties of a Neutral.

Lord Stowell's position is in perfect accordance with the observation of Lord Mansfield, in another case, viz.: Heathfield *v.* Chilton, that, "The privileges of public ministers and their retinue depend upon the law of nations, which is part of the common law of England. And the Act of Parliament of 7 Anne, ch. 12, did not intend to alter, nor can alter the law of nations."†

International law is a part of the common law of England.

The next Act of the British Government to which the United States invite the attention of the Tribunal, as showing to some extent that Government's sense of its duties toward the United States, is the Proclamation of Neutrality of May 13, 1861, already alluded to.

Duties recognized by the Queen's Proclamation of Neutrality.

It is not claimed that a belligerent has the right, by the custom of nations, to require a neutral to enforce in its favour an executive Proclamation of the neutral, addressed to its own citizens or subjects; but it is maintained that, as between Great Britain and the United States, there is a binding precedent for such a request to Great Britain. In 1793, during General Washington's administration, the representative of Great Britain in the United States pointed out to Mr. Jefferson, who was then Secretary of State, acts which were deemed by Her Britannic Majesty's Government to be "breaches of neutrality," done "in contravention of the President's Proclamation" of Neutrality, and he invited the United States to take steps for the repression of such acts, and for the restoration of captured prizes. It appears that the United States complied with these requests.‡

Relying, therefore, upon this precedent, established against Great Britain, rather than upon a right under the laws of nations, which can be asserted or maintained against the United States or against other nations, the United States invite the attention of the Tribunal to the fact that two principles, in addition to those already deduced from the Foreign Enlistment Act of 1819, appear to be conceded by the Proclamation of May 13, 1861:

1. That it is the duty of a neutral to observe strict neutrality as to both belligerents during hostilities.

Definition of neutrality.

Neutrality is defined by Phillimore "to consist in two principal circumstances: 1. Entire abstinence from any participation in the war; 2. Impartiality of conduct toward both belligerents." "This *abstinence* and this *impartiality* must be combined in the character of a *bonâ-fide* neutral."§

Bluntschli defines it thus: "La neutralité est la *non-participation* à la guerre. Lorsque l'état neutre soutient un des belligérants, il prend part à la guerre, en faveur de celui qu'il soutient, et dès lors *il cesse d'être neutre*. L'adversaire est autorisé à voir dans cette participation un acte d'hostilité. Et cela n'est pas seulement vrai quand l'état neutre livre lui-meme des troupes ou des vaisseaux de guerre, mais aussi lors qu'il prête à un des belligérants un appui médiat en permettant, *tandis qu'il pourrait l'empêcher*, que, de son territoire neutre, on envoie des troupes ou des navires de guerre."‖

Hautefeuille says: "Cet état nouveau impose aux neutres des devoirs particuliers: ils doivent s'abstenir complétement de toute acte d'immixtion aux hostilités et garder une stricte impartialité envers les deux belligérants. * * * L'impartialité consiste à traiter les deux belligérants de la même manière et avec une parfaite égalité dans tout ce qui concerne les relations d'état à état."¶

Lord Stowell says: "The high privileges of a neutral are forfeited by the abandonment of that perfect indifference between the contending parties, in which the essence of neutrality consists."**

Calvo collects or refers to the definitions given by the various writers on International Law, and expresses a preference for Hubner's: "La mas aceptable es la de Hubner, por la claridad y precision con que fija, no solo la situacion de las naciones pacificas, sino la extension que tiene sobre ellas el *status belli*."††

2. The Proclamation also distinctly recognizes the principle that the duties of a

* The Louis, Dodson's Admiralty Reports, Vol. II, p. 210.

† Heathfield v. Chilton, 4 Burrows, p. 2016 This observation of Lord Mansfield is cited and adopted by Phillimore Vol. III. p. 541.

‡ Vol. IV, pp. 94–102.

§ 3 Phillimore, ch. 9.

‖ Opinion impartiale sur la question de l'Alabama. Berlin, 1870, page 22.

¶ Nécessité d'une loi maritime pour régler les rapports des neutres et des belligérants. Paris, 1862, page 7.

** The Eliza Ann (1 Dodson's Reports, 244).

†† Calvo, Derecho Internacional, tom. 2, page 151, section 608.

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neutral in time of war do not grow out of, and are not dependent upon municipal laws. Offenders against the provisions of the Act are therein expressly forewarned that such offences will be "acts in derogation of their duty as subjects of a neutral sovereign in the said contest, *or in violation or contravention of the law of nations in that behalf.*"

Definition of neutrality.

Duties recognized by instructions to British officials during the insurrection.

The next acts of the British Government, indicating its sense of its duties as a neutral toward the United States, to which the attention of the Tribunal is invited, are the several instructions issued during the contest, for the regulation of the official conduct of its naval officers and of its colonial authorities towards the belligerents.*

These various instructions state or recognize the following principles and rules :—

1. A belligerent may not use the harbours, ports, coasts, and waters of a neutral in aid of its warlike purposes, or as a station or place of resort for any warlike purpose, or for the purpose of obtaining any facilities of warlike equipment.

2. Vessels of war of the belligerents may be required to depart from a neutral port within twenty-four hours after entrance, except in case of stress of weather, or requiring provisions or things for the crew, or repairs; in which case they should go to sea as soon as possible after the expiration of twenty-four hours.

3. The furnishing of supplies to a belligerent vessel of war in a neutral port may be prohibited, except such as may be necessary for the subsistence of a crew, and for their immediate use.

4. A belligerent steam-vessel of war ought not to receive in a neutral port more coal than is necessary to take it to the nearest port of its own country, or to some nearer destination, and should not receive two supplies of coal from ports of the same neutral within less than three months of each other.

Correspondence between the two Governments in 1793-94.

The attention of the Tribunal is further invited to the official opinions expressed by the Representative of Great Britain in the United States during the administration of President Washington upon the duties of a neutral toward a belligerent; and to the acts of the Government of the United States during that administration, preceding, and accompanying, and subsequent to those expressions of opinion; and to the Treaty concluded between the United States and Great Britain in 1794.

The first acts took place in the United States in 1793, a year before the passage of the first American Neutrality Law, when the United States had nothing but the law of nations and the sense of their duties as a neutral to guide them.

The Envoy from the new French Republic, M. Genêt, arrived at Charleston, in the United States, early in April, 1793, with the purpose of making the ports and waters of the country the base of hostile operations against Great Britain. The steps which he took are fairly referred to by Lord Tenterden in the memorandum already cited.†

The capital was then at Philadelphia, several hundred miles distant from Charleston, with few regular means of communication between the two towns. The Government of the United States was in its early infancy. Four years only had passed since it was originated, and it had not been tested whether the powers confided to it would prove sufficient for an emergency that might arise in its Foreign Relations. It had neither navy, nor force that could be converted into one, and no army on the sea-coast; and it was obliged to rely upon, and did actually call out, the irregular militia of the States to enforce its orders.

Under the directions of M. Genêt, privateers were fitted out, manned, and commissioned, from Charleston and other ports, before he reached Philadelphia, and prizes were brought in by them. On the 22nd of April, 1793, M. Genêt not having yet reached Philadelphia, President Washington issued his celebrated Proclamation, the first of its kind, in which he declared that "the duty and interest of the United States require that they should, with sincerity and good faith, adopt and pursue a conduct friendly and impartial toward the belligerent Powers;" and he warned all persons against "committing, aiding, or abetting hostilities against any of the said Powers."‡

The news of the coming of M. Genêt had preceded his arrival at Philadelphia. On the 17th May, 1793, Mr. Hammond, the then British Minister, made complaint of his acts, and called attention to the fact that privateers were fitting in South Carolina, which he conceived to be "breaches of neutrality which the United States profess to observe, and direct contraventions of the Proclamation."

He invited the Government to "pursue such measures as to its wisdom may appear the best calculated for repressing such practices in future, and for restoring to

* Vol. IV, page 175, et seq.
† Vol. IV, page 93, et seq.
‡ Vol. IV, page 94.

their rightful owners any captures which these particular privateers may attempt to bring into any of the ports of the United States."*

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Two days before the receipt of that representation, Mr. Jefferson had already complained to the French Minister of these proceedings, and M. Genêt, on his arrival, claimed to justify himself by the existing Treaties between France and the United States.

Correspondence between the two Governments in 1793-94.

Other cases subsequently occurred in which Mr. Hammond intervened; for an account of which the Tribunal of Arbitation is respectfully referred to Lord Tenterden's memorandum.

The subject of Mr. Hammond's complaints and his demand for the restoration of the captured vessels were under consideration until the 5th of June, 1793, when answers were given simultaneously to M. Genêt and to M. Hammond.

The former was told that the United States could not tolerate these acts of war within their territories. The latter was told that effectual measures would be taken to prevent a repetition of the acts complained of; but as to restoring the prizes, it could not be done for two reasons: first, because if commissions to the privateers were valid and the captures were legal, the Executive of the United States had no control over them; and if they were illegal, the owners had a sufficient remedy in the national courts; secondly, because the acts complained of had been done at a remote port, without any privity of the United States," "impossible to have been known, and therefore impossible to have been prevented by the Government."†

It is worthy of note that the owners did resort to the courts, and that prizes taken by these privateers were restored by judicial process.‡

The Government of General Washington determined, however, as it had been informed of these attempts at violating the sovereignty of the nation, that it was the duty of the United States not only to repress them in future, but to restore prizes that might be captured by vessels thus illegally fitted out, manned, equipped, or commissioned within the waters of the United States; or, if unable to restore them, then to make compensation for them.

The reasons for this course are stated in a letter from Mr. Jefferson to Mr. Hammond, dated the 5th of September, 1793.§

The United States' Government also, on the 4th of August, 1793, issued instructions to Collectors of the Customs,‖ which were intended to enforce the President's Proclamation of April 22. We have the authority of Lord Tenterden for saying that the result of the publication of those instructions was, that the system of privateering was, generally speaking, suppressed.¶

From this examination, it appears that a well conceived and extended system of violating the neutrality of the United States, when they were weak and the powers confided to their Executive were untried, was put in operation in April by the representative of one of the powerful nations of Europe, and was suppressed before August without legislation; and also that *the United States undertook to make compensation for the injuries resulting from violations that had taken place where they had failed to exert all the means in their power to prevent them.*

The Treaty of Nov. 19, 1794.

It was subsequently agreed between the two Governments** that in cases where restitution of the prizes should be impossible, the amount of the losses should be ascertained by a method similar to that provided by the Treaty of Washington, and that a money payment should be made by the United States to Great Britain in lieu of restitution. The examination of these claims extended over a period of some years, and the amounts of the ascertained losses were eventually paid by the United States to Great Britain.

Construction of that Treaty by the Commissioners appointed under it.

In the case of the "Jamaica," before the Commission, under the 7th Article of the Treaty of 1794, the capturing vessel was alleged to have been armed in the United States, but the prize (the Jamaica), with her cargo, was burned by the captors, and never brought within the jurisdiction of the United States. Upon this bare case, without any allegation of permission or neglect by the Government of the United States as to the arming of the French cruizer, the advocate for the claimants contended

* Vol. IV, page 95.

† Vol. IV, page 97.

‡ Dana's Wheaton, section 439, note 215, page 536. This note, which contains an exhaustive review of the American policy, may be found in Vol. VII, page 11.

§ Vol. IV, page 100. The United States also refer to Mr. Jefferson's letter to Mr. Hammond, of November 14, 1793.

‖ Vol. IV, page 97.

¶ Vol. IV, page 101.

** Treaty concluded between the United States and Great Britain, at London, November 19, 1794, commonly known as "Jay's Treaty." See United States Statutes at Large, Vol. VIII, page 116.

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that the law of nations obliged the United States to make compensation. The claim was rejected; "the Board (one gentleman only dissenting) were of opinion that the case was not within the stipulation of the Article under which the commissioners act."

A rehearing being granted and counsel heard, Mr. Gore delivered the opinion sustaining the original determination. After reviewing British precedents cited by the counsel for the claimants, as supporting his view of international law, Mr. Gore says:—

"The counsel for the claimant seemed to suppose that the obligation to compensate arose from the circumstance of the privateer's having been originally armed in the United States; but as *there is not the smallest evidence to induce a belief that in this or in any other case the Government permitted, or in any degree connived at such arming, or failed to use the means in their power to prevent such equipment,* there is no ground to support a charge on the fact that the armament originated in their ports."*

All these steps prior to 1794 were taken by the United States under the general rules of international law, without the aid of a local Statute, in order to perform what Mr. Jefferson called "their duty as a neutral nation to prohibit such acts as would injure one of the warring Powers."† In 1794, however, the Congress, of the United States, on the application of Great Britain, passed a Statute prohibiting such acts under heavy penalties.‡

The neutrality laws of the United States enacted at the request of Great Britain.

The general provisions of the United States' Act of 1818 (which is still in force) are set forth in note 1 on page 114. This Act was passed at the request of the Portuguese Government. The Act of 1838 was enacted on the suggestion of Great Britain. In the year 1837 a formidable rebellion against Great Britain broke out in Canada. Sympathizers with the insurgents beginning to gather on the northern frontier of the United States, Mr. Fox, the British Minister at Washington, "solemnly appealed to the Supreme Government promptly to interpose its sovereign authority for arresting the disorders," and inquired what means it proposed to employ for that purpose. The President immediately addressed a communication to Congress, calling attention to defects in the existing Statute, and asking that the Executive might be clothed with adequate power to restrain all persons within the jurisdiction of the United States from the commission of acts of the character complained of. Congress thereupon passed the Act of 1838. Thus Great Britain once more asked the United States to amend their neutrality laws, in British interest, so as to give more power to the Executive, and the request was complied with.

Case of the bark Maury.

In the year 1855, Great Britain being then at war with Russia, it was supposed by the British Consul at New York that a vessel called the "Maury," which was being innocently fitted out at New York for the China trade, was intended as a Russian privateer. The British Minister at Washington at once called the attention of Mr. Marcy, the then Secretary of State, to this vessel. The affidavits which he inclosed for the consideration of the Secretary of State fell far, very far short of the evidence which Mr. Adams submitted to Earl Russell in regard to the Liverpool cruizers. The whole foundation which the British Minister furnished for the action of the United States was the "belief" of the Consul, his lawyer, and two police officers that the vessel was intended for Russian service. This was communicated to the Government of the United States on the 11th of October. Notwithstanding the feebleness of the suspicion, the prosecuting officer of the United States was, on the 12th of October, instructed by telegraph to "prosecute if cause appears," and was at work on the 13th in order to prevent a violation of the sovereignty of the United States to the injury of Great Britain.§ The proceedings given at length in the accompanying volumes show with what rapidity and zeal the investigation was made, and that the charge was at once proved to be unfounded.

Principles thus recognized by the two Governments.

In all this correspondence and these precedents, the following principles appear to have been assumed by the two Governments:—

1. That the belligerent may call upon the neutral to enforce its municipal Proclamations as well as its municipal laws.

2. That it is the duty of the neutral, when the fact of the intended violation of its sovereignty is disclosed, either through the agency of the Representative of the belligerent, or through the vigilance of the neutral, to use all the means in its power to prevent the violation.

3. That when there is a failure to use all the means in the power of a neutral to prevent a breach of the neutrality of its soil or waters, there is an obligation on the part of the neutral to make compensation for the injury resulting therefrom.

* 2nd Vol. Mms. Opinions, Department of State.
† Mr. Jefferson to M. Genêt, June 5, 1793. Jefferson's Works, Vol. III, page 572.
‡ Mr. Canning's speech, cited *ante*, page 28.
§ Vol. IV, pp. 53–62.

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The United States are aware that some eminent English publicists, writing on the subject of the "Alabama Claims," have maintained that the obligation in such case to make compensation would not necessarily follow the proof of the commission of the wrong; but the United States confidently insist that such a result is entirely inconsistent with the course pursued by Great Britain and the United States, during the administration of General Washington, when Great Britain claimed of the United States compensation for losses sustained from the acts of cruisers that had received warlike additions in the ports of the United States, and the United States admitted the justice of the claim and paid the compensation demanded. The United States also point to the similar compensation made by them to Spain in the Treaty of 1819, for similar injuries inflicted on Spanish commerce during the war of the independence of the Spanish American Colonies, as showing the sense of Spain on this point.

Obligation to make compensation for injuries.

Correspondence between the United States and Portugal.

In the course of the long discussions between the two Governments on the Alabama claims, Great Britain has attempted to justify its course by a reference to the conduct of the United States toward Portugal between 1816 and 1822.*

The several replies of Mr. Adams amply defended the course of the United States in that affair. From the replies and from the official documents referred to in them, it would appear that in the year 1850 the United States had brought to the point of settlement a long-standing claim against Portugal, for the destruction of the American armed brig General Armstrong, in the harbour of Fayal, in the year 1814. They were at the same time pressing some other claims against Portugal, and were conducting a correspondence with the Portuguese Legation at Washington, growing out of the seizure of a Portuguese slaver.†

The Portuguese Government, as an offset to these claims of the United States, revived some exploded claims of Portugal against the United States, for alleged violation of neutrality, that had slumbered for nearly thirty years. These are the claims referred to by Earl Russell in his note to Mr. Adams of May 4, 1865,‡ and his note to the same of August 30, 1865,§ and his note to the same dated November 2, 1865.‖ Lord Russell asserts that the complaints of Portugal were more frequent, and extended to a larger amount of property after 1818 than they had done before. Mr. Adams denies this allegation,¶ and his denial is supported by the evidence in possession of the Government of the United States.

The facts appear to be these: On the 20th December, 1816, the Portuguese Minister informed the then Secretary of State (Mr. Monroe) of the fitting out of privateers at Baltimore to act against Portugal, in case it should turn out that that Government was at war with the "self-styled Government of Buenos Ayres." He further stated that he did not make the application in order "to raise altercations or to require satisfaction," but that he solicited "the proposition to Congress of such provisions by law as will prevent such attempts for the future," being "persuaded that my [his] magnanimous Sovereign will receive a more dignified satisfaction, and worthier of his high character, by the enactment of such laws by the United States." Mr. Monroe replied, on the 27th of the same month, "I have communicated your letter to the President, and have now the honour to transmit to you a copy of a message which he has addressed to Congress on the subject, with a view to obtain such an extension, by law, of the Executive power as will be necessary to preserve the strict neutrality of the United States, * * * and effectually to guard against the danger in regard to the vessels of your Sovereign which you have anticipated." The Act of 1817 was passed and officially communicated to the Portuguese Minister on the 13th of March, 1817. On the 13th of May, 1817, the Portuguese Minister informed the Secretary of State that although "the law passed at the last session of Congress obviated a great part of the evils" of which he complained, he feared there would be a lack of vigilance on the part of some of the officials, and he asked for special instructions to them. On the 8th of March, 1818, he complained to Mr. John Quincy Adams, then Secretary of State, of the capture of "three Portuguese ships, captured by privateers fitted in the United States, manned by American crews, and commanded by American captains, though under insurgent colours;" and he asked for satisfaction and indemnification for the injury. The note making this complaint contained neither proof of the allegations in the note as to the fitting out of vessels in

* Vol. III, pp. 556–560,
† Executive Document No. 53, 32nd Congress, 1st Session.
‡ Vol. III, page 525.
§ Vol. III, page 548.
‖ Vol. III, page 584.
¶ Vol. III, page 621.

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the United States, or as to their being manned by Americans, nor indications from which the United States might have discovered those facts for themselves. The Secretary of State, therefore, in reply to such an allegation, very properly stated the fact that the United States had "used all the means in its power to prevent the fitting out and arming of vessels in their ports to cruize against any nation with whom they were at peace," *and* had "faithfully carried into execution the laws to preserve inviolate the neutral and pacific obligations of the Union;" and *therefore* could not consider themselves "bound to indemnify individual foreigners for losses by captures." It will not escape the notice of the Tribunal that Mr. Adams calls attention to the distinction between the national obligations under the law of nations and the duty of the Government to execute the municipal law; and that he grounds his refusal upon the fact that both have been complied with.

The Portuguese Minister next complains (October 15, 1818) that a privateer is fitting out in Baltimore, and the Secretary of State orders a prosecution and asks for the names of the witnesses, and it appears that before November 13 the Portuguese Minister is informed that the grand jury have found a bill against the accused. On the 14th of November the Portuguese Minister sends to the Secretary of State depositions and the names of witnesses, and informs him that he is alarmed at the "thick crowd of individuals who are engaged in this iniquitous business," and that "great care has been taken to intercept the notice of such facts from the knowledge of the Executive." Mr. Adams, on the 18th of November, informs the Minister that the evidence has been placed in the hands of the prosecuting Attorney of the United States. It thus appears that the second complaint was disposed of to the satisfaction of the Representative of Portugal.

The third complaint, made on the 11th of December, 1818, states that an armed vessel called the Irresistible, sailing under so-called Artigan colours, was committing depredations on the coast of Brazil, and that the Commander and crew of the vessel were all Americans. It will be observed that, in this complaint, there is no charge made of an illegal use of the soil or waters of the United States in violation of their duties as a neutral. The charge is, that citizens of the United States, beyond their jurisdiction, have taken service under a belligerent against Portugal.

The next communication from the Portuguese Minister, is made on the 4th of February, 1819. He asks to have the Neutrality Act of 1817 continued. The Secretary of State answers, on the 9th, that that has already been done by the passage of the Act of 1818. This appears to have been regarded as entirely satisfactory.

The next note is dated the 17th March, 1819. Although stating that there were persons in the United States "interested in this iniquitous pursuit of plundering the lawful property of an inoffensive friendly nation," in which statement the Minister undoubtedly supposed that he was correct, he says that he has "abstained from written applications about the new individual offences;" and he makes no particular complaint, furnishes no evidence, and indicates no suspicions. It appears to be the object of the note to induce the Government of the United States to withdraw its recognition of the Artigan flag. "If this," he says, "is once declared illegal, and the prizes made under it acts of piracy, all occasions of bitterness and mistrust are done away." I can, in the capacity of Minister of my Sovereign, certify you solemnly, and officially to, if necessary, that Artigas and his followers have been *expelled far from the countries that could afford them the least means and power of navigating, and consequently have no right to fight by sea.* What becomes, then, of the rights of privateers under this flag?" When the Tribunal come to consider the case of the Shenandoah at Melbourne, they will find this language, which was referred to with approbation, and assumed by Earl Russell,* to be exactly in point in disposing of the claims growing out of the acts of that vessel.

On the 22nd of April, the Secretary of State acknowledges the note of December 11, 1818, and says that he is informed the Commander of the Irresistible has returned to Baltimore, and will be prosecuted for a violation of neutrality, and asks the Minister to furnish proof for the trial.

On the 23rd of November, 1819, the Minister again complained. He says: "One city alone on this coast has armed twenty-six ships, which prey on our vitals; and a week ago three armed ships of this nature were in that port waiting for a favourable occasion of sailing for a cruise." But he furnishes no facts, and he gives neither proof nor fact indicating the city or the district which he suspected, and nothing to afford the Government any light for inquiry or investigation. On the contrary, he says: "*I shall not tire you with the numerous instances of these facts;*" and he adds, as if attaching little

* Vol. III. page 556.

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or no real importance to the matter: "Relying confidently on the successful efforts of this Government, *I choose this moment to pay a visit to Brazil.*"

On the 4th of June, 1820, the Minister, not yet having departed, informs the Secretary of State that he desires to offer his "thanks for the law that prohibits the entrance of privateers in the most important parts of the Union;" that he acknowledges the salutary influence of the Executive in obtaining these ameliorations;" and that he is fully persuaded of the sincere wishes of this Government to put a stop to practices so contrary to friendly intercourse."

On the 8th of June, 1820, he gives information of a formidable privateer, which he says is to be fitted out at Baltimore, and adds that he "has not the least doubt that the supreme Executive has both the power and the will of putting a stop to this hostile armament;" to which the Secretary of State, on the 20th July, replies that "such measures have been, and will continue to be taken, under the direction of the President, as are within the competency of the Executive, and may serve to maintain inviolate the laws of the United States applicable to the case."

On the 16th of July, the Minister "laid before this Government the names and value of nineteen Portuguese ships and their cargoes, taken by private armed ships fitted in the ports of the Union by citizens of these States;" but he did not accompany this allegation with proof of such fitting, or with anything tending in the remotest degree to fix a liability on the United States, or to afford them the means of an independent examination. He also proposed a Joint Commission for the settlement of these matters, which the Secretary of State, on the 30th September, 1820, declined, saying, that the Government of the United States has neither countenanced nor permitted any violation of neutrality by their citizens. They have, by various and successive Acts of Legislation, manifested their constant earnestness to fulfil their duties toward all parties to the war. They have repressed every intended violation of them which has been brought before their Courts, and substantiated by testimony." Other claims were transmitted to the United States' Government on the 4th December, 1820, unaccompanied, as had been the invariable case before, by anything tending to show a liability in the United States to make compensation.

The case appears to have been closed by an offer from Portugal, on the 1st of April, 1822, to grant to the United States exceptional commercial advantages if the United States would recognize those claims, and the refusal of the United States, on the 30th of April, to do so.

It is worthy of remark that, in Earl Russell's elaborate statement of this correspondence, in his note of the 30th of August, 1865, he omits, with a completeness which argues design, certain parts of it which showed that the United States were animated with a constant desire to perform their international duties. Thus, nothing is said of the Portuguese note of February 4, 1819, asking that the Neutrality Act of 1817 may be continued in force, and the American reply, stating that it had been so continued. Nothing is said of the American note of the 22nd of April, 1818, stating that the commander of the Irresistible, the vessel referred to in the Portuguese note of December 11, 1818, had returned to Baltimore and would be prosecuted. The American note of the 20th of July, 1820, is also omitted, in which, in answer to the Portuguese note of the 8th of June, 1820, it is stated that measures have been, and will continue to be, taken to maintain inviolate the laws of the United States.

The Tribunal of Arbitration cannot fail to observe that these suppressed notes had an important bearing in forming a judgment upon the correctness of the conduct of the Government of the United States in this case—a case which has received the official approval of Earl Russell, as Her Majesty's Principal Secretary of State for Foreign Affairs. From a candid review of the correspondence, it appears that the United States admitted or asserted the following propositions, to which Her Majesty's Government, through Earl Russell, has given its assent:—

Principles recognized in that correspondence.

1. That a neutral Government is bound to use all the means in its power to prevent the equipping, fitting out, or arming, within its jurisdiction, of vessels intended to cruise against a Power with which it is at peace.

2. If the means within its power are, in the opinion of either belligerent, inadequate for the purpose, it is bound to receive suggestions of changes from the belligerent, and if it be true that the means are inadequate, it should so amend its laws, either in accordance with such suggestions or otherwise, as to put new and more effective means in the hands of its Executive.

3. That it is bound to institute proceedings under its law against all vessels as to which reasonable grounds for suspicion are made to appear, even if the grounds for suspicion fall short of legal proof.

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Principles recognized in that correspondence.

The Government of Portugal, during the whole correspondence, offered no evidence to prove that captures had been made by armed vessels illegally fitted out, equipped, or armed, in the United States, nor even statements of facts tending to lead to the discovery of such evidence, which were not at once used for the purpose of detaining such vessels, or of punishing the guilty parties; nor did they contest by proof the allegation of Mr. John Quincy Adams that the Government of the United States had done everything in its power to perform its duties as a neutral, and to execute its laws. The correspondence shows conclusively that in every case in which the United States was furnished either with positive legal proof, or with such an intimation of the facts as would enable them to pursue the investigation themselves, they acted with the vigour which was required by them by International Law, and which Great Britain failed to show in similar cases during the rebellion.

The claims lay buried until they were exhumed by Mr. Figaniere, in 1850, as an offset to the "General Armstrong" case; and would have been forgotten if Earl Russell had not rescued them from oblivion.

Rules in the Treaty of Washington.

The latest official act of Her Majesty's Government, indicating the views of Great Britain as to the duties of a neutral in time of war, is to be found in the Rules contained in Article VI of the Treaty of Washington. It is true that it was thought essential by the British negotiators to insert in that instrument a declaration on the part of Her Majesty's Government that they could not consent to those Rules as a statement of principles of international law which were in force at the time when the claims now under discussion arose. But the United States were then, and are still, of the opinion, and they confidently think that the Tribunal of Arbitration will agree with them, not only that those rules were then in force, but that there were also other rules of International Law then in force, not inconsistent with them, defining, with still greater strictness, the duties of a neutral in time of war.

Article VI of the Treaty of Washington contains the following rules:

"A neutral government is bound—

"First, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

"Secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies of arms, or the recruitment of men.

"Thirdly, to exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties."

Article VII contains the following provision as to compensation: "In case the Tribunal finds that Great Britain has failed to fulfil any duty or duties as aforesaid, it may, if it think proper, proceed to award a sum in gross, to be paid by Great Britain to the United States, for all the claims referred to it;" and Article X provides that, "in case the Tribunal find that Great Britain has failed to fulfil any duty or duties as aforesaid, and does not award a sum in gross, the High Contracting Parties agree that a Board of Assessors shall be appointed to ascertain and determine what claims are valid, and what amount or amounts shall be paid by Great Britain to the United States on account of the liability arising from such failure."

The obligation to prevent vessels of war from being fitted out, armed, or equipped, within the jurisdiction of a neutral, when such vessels are intended to cruise or to carry on war against a Power with which the neutral is at peace, is recognized almost in the identical terms in which it was stated in the original United States Act of 1794, which Mr. Canning said was passed at the request of the British Government, and in the British Act of 1819, passed to aid Great Britain in the performance of its duties as a neutral.

What is "due diligence."

The Rules impose upon the neutral the obligation to use *due diligence* to prevent such fitting out, arming, or equipping. These words are not regarded by the United States as changing in any respect the obligations of a neutral regarding the matters referred to in the Rules, as those obligations were imposed by the principles of International Law existing before the conclusion of the Treaty.

The phrases "negligence" and "diligence," though opposite, are correlative expressions: the presence of the one implies the absence of the other. It happens that in the ordinary course of judicial proceedings the term "negligence" is the one most

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frequently employed, and is therefore the one most often commented on and explained by writers on law. "Negligence," which is only the absence of the diligence which the nature and merits of any particular subject, and the exigencies of any particular case demand as "due" from the nature of its inherent circumstances, implies blamable fault, called in the Roman law *culpa*, with responsibility for consequences. The idea of obligation, either legal or moral, and of responsibility for its non-performance, is found in all the forms and applications of the question, either of diligence or of negligence.

Legal writers in England, in America, and on the Continent of Europe, have treated this matter in reference to numerous subjects of controversy, public and private. It has come under the consideration of courts in questions relating to the custody of property, to the performance of contracts, to the transportation of persons or property, to the collision of ships and railway-trains, to the discharge of private trusts, to the execution of public duties, and in many other ways.

In most of these cases, with the Roman, Continental, and Scottish jurists, and to a certain extent with English and American courts, the question has generally been put as one of negligence or *culpa*, rather than as an absence of diligence. But, nevertheless, the phrase "due diligence," *exacta diligentia*, is of received use in the civil law.*

The extent of the diligence required to escape responsibility is, by all authorities, gauged by the character and magnitude of the matter which it may effect, by the relative condition of the parties, by the ability of the party incurring the liability to exercise the diligence required by the exigencies of the case, and by the extent of the injury which may follow negligence.

One of the earliest and one of the best of the English expositors of the Roman law is Ayliffe, (New Pandects of Roman Civil Law as anciently established in that Empire, and practised in most European Nations, London, 1734.) He says: "A fault is blamable through want of taking proper care; and it obliges the person who does the injury, because by an application of due diligence it might have been foreseen and prevented."†

* Vinnius, Comment. ad Inst., lib. 3, tit. 15.

† Ayliffe, in his Pandects, (B. 2, tit. 13, pp. 108, 109, 110), has given an elaborate view of the different sorts of fault or negligence, and fraud and deceit. The passage is long, but as it contains a very ample view of the opinions of the civilians it may be useful to place a part of it in a note.

"The word fault, in Latin called *culpa*, is a general term; and according to the definition of it, it denotes an offence or injury done unto another by imprudence, which might otherwise be avoided by human care. For a fault, says Donatus, has a respect unto him who hurts another not knowingly or willingly. Here we use the word offence or injury by way of a genus, which comprehends deceit, malice, and all other misdemeanors, as well as a fault; for deceit and malice are plainly intended for the injury of another, but a fault is not so designed. And therefore we have added the word imprudence in this definition, to point out and distinguish a fault from deceit, malice, and an evil purpose of mind, which accompanies all trespasses and misdemeanors. A fault arises from simplicity, a dullness of mind, and a barrenness of thought, which is always attended with imprudence; but deceit, called *dolus*, has its rise from a malicious purpose of mind, which acts in contempt of all honesty and prudence, with a full intent of doing mischief or an injury. And by these last words in the definition, namely, which might otherwise be avoided by human care, we distinguish a fault from a fortuitous case. For a fault is blamable through want of taking proper care; and it throws an obligation upon the person that does the injury, because by an application of due diligence it might have been foreseen and prevented. But fortuitous cases often cannot be forseen, or (at least) prevented by the providence of man; as death, fires, great floods, shipwrecks, tumults, piracies, &c. Those things are superior to the prudence of any man, and rather happen by fate, therefore are not blamable. But if fraud or some previous fault be the occasion of these nocuments, they are not then deemed to be fortuitous cases. A fault is a deviation from that which is good; and, according to Bartolus, erring from the ordinance and disposition of a law It is sometimes difficult to judge what is the difference betwixt a fault and a *dolus*, since these words very often stand for one and the same thing. There is no one in this life lives without a fault; but that he would speak distinctly and properly, must impute a *dolus* to some wickedness or knavery, and a fault to imprudence. The first consists chiefly in acting, and the other in not acting or doing something which a man ought to do. According to Bartolus, a fault is divided into five species, viz.; *culpa latissima*, *latior*, *lata*, *levis*, and *levissima*. The first he makes to be equal to manifest deceit, and the second to be equivalent unto presumptive malice or deceit. The first and second of these distinctions (he says) approach unto fraud, and are sometimes called by the name of fraud. But a *lata culpa*, which is occasioned by gross sloth, rashness, improvidence, and want of advice, is never compared unto deceit or malice. For he that understands not that which all other men know and understand may be styled (says Bartolus) a supine and unthinking man, but not a malicious and deceitful person. But, I think, none of those distinctions of his have any foundation in law; for such things as admit of any degree of comparison, in respect of being more or less so, do not admit of any specific difference; as *majus et minus diversas species non constituunt*. For that which the law says *de latiore culpâ* sometimes is to be understood *de lata culpâ*, after the manner that a word of the comparative degree is sometimes put for a word of the positive, as in Virgil: *Tristior et lacrymis oculos suffusa nitentes*. Wherefore I shall here distinguish a fault into two species only, to wit, into *lata* and *levis*, though others mention a *culpa levissima* too. The first denotes a negligence extremely blamable: that is to say, such a negligence as is not tempered with any kind of dilligence. The other imports such a kind of negligence, whereby a person does not employ that care in men's affairs which other men are wont to do, though he be not more diligent in his own business. But as often as the word *culpa* is simply used in the law, it is taken for that which we style *culpa levis*, a light fault, because words are ever understood in the more favourable sense. A *culpa levissima*, or simple negligence,

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What is "due diligence."

Mr. Justice Story has elaborately discussed the meaning of these terms, and the extent of diligence required to avoid responsibility. He says, as the result of a comparative examination of the authorities of different nations, "What is usually done by prudent men in a particular country in respect to things of a like nature, whether it be more or less, in point of diligence, than what is exacted in another country, becomes in fact the general measure of diligence."*

Following the example of Sir William Jones, and other writers on the civil law, Mr. Justice Story favours the idea that there may be three degrees of diligence, and three degrees of negligence, which are capable of being accurately defined and applied to the various circumstances of life. But while asserting, as the authorities supported him in doing, that not only the Roman law, but the jurists of Continental Europe and of Scotland all recognize this division, he candidly concedes the difficulty of applying such a fictitious system, and he is obliged to admit the general and only sound principle, that "diligence is usually proportioned to the degree of danger of loss, and that danger is, in different states of society, compounded of very different elements."*

The highest court of the United States has doubted the philosophy of grading the degrees of diligence and negligence into fixed classes.†

The Scottish courts have laid down a rule which is perhaps more philosophical—that where an injury has been suffered through the act or omission of another, it must be shown, in order to avoid liability, that the accident was caused without any fault of the party doing or suffering the act or omission, and through some latent cause, which could not be discerned, obviated, controlled, or averted.‡

In the discussion upon the Treaty of Washington in the House of Lords, Lord Granville, the Minister for Foreign Affairs, is represented as saying:—"The obligation to use due diligence implies that the Government will do all in its power to prevent certain things, and to detain vessels which it has reasonable ground for believing are designed for warlike purposes."§ Lord Cairns, in the same debate, is represented as saying:—"The point turns upon the words 'due diligence.' Now, the moment you introduce those words you give rise to another question, for which I do not find any solution in this rule. What is the standard by which you can measure due diligence? Due diligence by itself means nothing. What is due diligence with one man, with one Power, is not due diligence with another man, with a greater Power." Sir Roundell Palmer, in a subsequent debate in the House of Commons, said that he supposed that

is that which proceeds from an unaffected ignorance and unskillfulness, say they, and it is like unto such a fault, which we easily excuse, either on the account of age, sex, rusticity, &c. Or, to set the matter in a clearer light, a *lata culpa* is a diligence in a man's own affairs, and a negligence in the concerns of other men. And a *levis culpa* is, when a man employs the same care or diligence in other men's affairs as he does in his own, but yet does not use all care and fidelity which more diligent and circumspect men are wont to make use of; and this may be called an accustomed negligence as well in a man's own affairs as in the business of other men. A *lata culpa*, I mean a great fault, is equivalent or next unto deceit or malice. And it may be said to be next unto deceit or malice two ways, namely, either because it contains in it a presumptive deceit, as when a man does not use the same diligence in another's concerns as in his own; or else because the fault is so gross and inexcusable, that, though fraud be not presumed, yet it differs but little from it. As when a person becomes negligent in favour of a friend; for though favour, or too great a facility of temper, excuses a man from malicious or knavish purpose, yet it is next of kin thereunto. And it is a rule laid down in law, that when the law commands any act of deceit to be made good, it is also always understood of a *lata culpa*, or a gross fault. Wherefore, since a great fault is equivalent or next unto deceit, it follows, that in every disposition of law where it is said that an evil intent or *dolus* ought only to be repaired, it is to be understood also of a *lata culpa*; which is true, I think, unless it be in the Cornelian law de Sicariis. For he who commits the crime of murder *ex latâ culpâ*, shall be punished according to the severity of that law, but in a more gentle manner; and thus herein a *lata culpa* is distinguished from malice, or an evil design, called *dolus malus*; for a murderer is liable on the score of his wicked purpose, and not on the account of gross negligence. Some say, that generally speaking, whenever the law or an action is touching a pecuniary penalty, and the law expressly mentions a *dolus*, a *lata culpa* is insufficient, and is excluded."

Numerous authorities to the same effect might be cited; but it will suffice at this stage to refer to such as are most familiar to jurists in Great Britain and the United States.

Wood's Institutes, p. 106.
Hallifax's Civil Law, p. 78.
Bell's Commentaries, section 232 et seq.
Browne's Civil and Admiralty Law, Vol. I, p. 354.
Erskine's Institutes, bk. 3, tit. 1.
Bowyer's Civil Law, p. 174.
Mackenzie's Roman Law, p. 186.
Domat's Civil Law by Strahan, Vol. I, p. 317.
Heineccius, Elementa Juris Civilis, lib: 3, tit. 14, Opera, tom. V.

* Story on Bailments, section 14.
† Steamboat New World *v.* King, 17 Howard Reports, page 475. See also the authorities there cited.
‡ Hay on Liabilities, ch. 8.
§ London Times, June 13, 1871.

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due diligence "meant that a neutral should use, within a reasonable sense, all the means legitimately in its power."*

What is "due diligence."

It is needless to say that the United States do not agree in these official definitions by Lord Granville and Sir Roundell Palmer, in the sense in which they are probably made. The definition to which Lord Cairns has given the weight of his authority appears to be nearer to the opinions as to these words, entertained by the United States.

The United States understand that the diligence which is called for by the Rules of the Treaty of Washington is a *due* diligence; that is, a diligence proportioned to the magnitude of the subject and to the dignity and strength of the Power which is to exercise it:—a diligence which shall, by the use of active vigilance, and of all the other means in the power of the neutral, through all stages of the transaction, prevent its soil from being violated:—a diligence that shall in like manner deter designing men from committing acts of war upon the soil of the neutral against its will, and thus possibly dragging it into a war which it would avoid:—a diligence which prompts the neutral to the most energetic measures to discover any purpose of doing the acts forbidden by its good faith as a neutral, and imposes upon it the obligation, when it receives the knowledge of an intention to commit such acts, to use all the means in its power to prevent it.

No diligence short of this would be "due;" that is, *commensurate with the emergency, or with the magnitude of the results of negligence.* Understanding the words in this sense, the United States find them identical with the measure of duty which Great Britain had previously admitted.

Fitting out, arming, or equipping, each a offence.

It will also be observed that fitting out, or arming, or equipping, each constitutes in itself a complete offence. Therefore a vessel which is fitted out within the neutral's jurisdiction, with intent to cruise against one of the belligerents, although not equipped or armed therein (and *vice versâ*) commits the offence against International Law, provided the neutral government had reasonable ground to believe that she was intended to cruise or carry on war against such belligerent, and did not use due diligence to prevent it.

The second clause of the first Rule.

The neutral is required by the second clause of the first rule of the Treaty to prevent the departure from its jurisdiction of any vessel intended so to cruise or carry on war, such vessel having been *specially adapted, in whole or in part, within such jurisdiction to warlike use.*

Reasons for change of language.

The Tribunal of Arbitration probably will not have failed to observe that a new term is employed here. In the first clause of the first Rule the obligation of the neutral is limited to the prevention of the "fitting out, arming, and equipping" the vessel. In the second clause the language is much broader: a vessel which has been "specially adapted, in whole or in part, to warlike use," may not be permitted to depart. The reasons for this change may probably be found in the different interpretations which have been put by the Executive and Judicial Departments of the two Governments upon the words "fitting out" and "equipping," and in the desire of the negotiators of the Treaty to avoid the use of any words that could be deemed equivocal. The United States will endeavour to explain to the Tribunal what these differences of interpretation were.

The eighth section of the United States law of 1818 empowers the President to take possession of and detain vessels which have been "*fitted out and armed*" contrary to the provisions of the Act. In the year 1869, while there was a state of recognized war between Spain and Peru (although there had been no active hostilities for several years), the Spanish Government made contracts for the construction of thirty steam gun-boats in the port of New York. After some of these boats were launched, but while most of them were on the stocks, and before any had received machinery or had been armed, the Peruvian Minister, on behalf of his Government, represented to the Government of the United States that this was being done in violation of the neutrality of the United States. The President, proceeding under the section of the statute above referred to, took possession of the vessels, and they remained in the custody of the naval forces of the United States until they were released, with the consent of the Peruvian Minister at Washington. This was done under the assumption that the construction of a vessel in neutral territory during time of war, which there is reasonable ground to believe may be used to carry on war against a Power with which the neutral is at peace, is an act which ought to be prevented; and that the constructing or building such a vessel was included in the offence of fitting it out. The same inter-

* A speech delivered in the House of Commons, on Friday, August 4, 1871, by Sir Roundell Palmer, M.P. for Richmond. London and New York, Macmillan and Co., 1871, page 28.

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pretation (in substance) has been given to this language by the Judicial Authorities of the United States.* The British Tribunals have given a different opinion upon the meaning of these words. In the case of the "Alexandra,"† against which proceedings were had in London in 1863 for an alleged violation of the provisions of the Act of 1819, it was held that the proof of the construction of a vessel for the purpose of hostile use against the United States did not establish such an equipment, or fitting out, or furnishing, as would bring the vessel within the terms of the Foreign Enlistment Act‡ and enable the Government to hold it by proceedings under that statute. When the Joint High Commissioners met at Washington, and had to consider what words they would use in the Treaty, they found the Executive of the United States and the Judiciary of Great Britain differing as to the meaning of these important words.§ The Tribunal of Arbitration may therefore reasonably presume that the framers of that Treaty, after the experience of the American insurrection, sought for language which would, beyond any question, indicate the duty of the neutral to prevent the departure from its ports, of any vessel that had been specially adapted for the hostile use of a belligerent, *whether that adaptation began when the keel was laid to a vessel intended for such hostile use, or whether it was made in latter stages of construction, or in fitting out, or in furnishing, or in equipping, or in arming, or in any other way.*

Reasons for change of language.

The undoubted duty of the neutral to *detain* such a vessel, although it had not been formulated by Great Britain in any of the acts prior to 1861 which have been passed in review, is understood to have been included in the obligation to prevent her construction. The United States regard this duty as one that existed by the law of nations prior to the Treaty of Washington; but as that Treaty provides that, for the purpose of the present discussion, the rule is to be taken as having the force of public law during the Southern Rebellion, it is needless to discuss that point.

Continuing force of this Rule.

The United States invite the particular attention of the Tribunal to the continuing character of the second clause of this rule. The violation of the first clause takes place once for all when the offending vessel is fitted out, armed, or equipped within the jurisdiction of the neutral; but the offence under the second clause may be committed as often as a vessel, which has at any time been specially adapted, in whole or in part, to warlike use within the jurisdiction of the neutral, enters and departs unmolested from one of its ports. Every time that the Alabama, or the Georgia, or the Florida, or the Shenandoah, came within British jurisdiction, and was suffered to depart, there was a renewed offence against the sovereignty of Great Britain, and a renewed liability to the United States.

Duty to detain offending vessels admitted by Great Britain.

The British Government, certainly once, if not oftener, during the rebellion, admitted its duty to detain these cruizers. Mr. Cobden stated it forcibly in a speech in the House of Commons.‖ "The Government admit, through their legal adviser, that they have the power, if they choose to exercise it, to prevent these vessels from entering our harbours; but the honourable and learned gentleman doubts the expediency of exercising it, and his reason is that he thinks we have not clear proof of guilt. This brings me to a striking piece of inconsistency on the part of the honourable and learned gentleman. He begins with administering a solemn exhortation, and something like a solemn reproof to English ship-builders, for infringing our neutrality laws and disregarding the Queen's Proclamation by building these ships. Well, but if they are violating our neutrality and disregarding the Queen's Proclamation, it must have been because they built these vessels for a belligerent to be employed against some Power with which we are at peace. The honourable and learned gentleman assumes that these individuals are guilty of these acts. He knows they have been guilty of these acts; he knows that these three vessels in particular, and the *Alabama* more especially, have been built for the Confederate Government, and employed solely for that Government, and yet he doubts the expediency of stopping them from entering our ports. He speaks as though we were asking that he should send out ships of war to order away these vessels without trial. He says there must be legal proof; but it does not require

* United States *v.* Quincy, 6 Peters's Reports, 445.

† Vol. V, pp. 3–470.

‡ This opinion was on the Act of 1819. The Act of 1870 provides that "equipping shall include the furnishing a ship with any tackle, apparel, furniture, provisions, arms, munitions, or stores, or any other thing which is used in or about a ship for the purpose of fitting or adapting her for the sea or for naval service."

§ "It is perfectly true that Lord Chief Baron Pollock and Baron Bramwell, as well as other great legal authorities, thought that such words as these did not convey the true meaning of our then Foreign Enlistment Act, which, in their opinion, was intended to apply only to those vessels which might be armed within our jurisdiction, either completely or, at least, so far as to leave our waters in a condition immediately to commence hostilities."—Sir R. Palmer's Speech, August 4, 1871, page 32

‖ Vol. V, page 590.

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legal proof to warrant you in telling a Government, 'You have got these vessels clandestinely; you got them by the infringement of our neutrality code, or, at least we suspect you upon fair grounds of doing so; and unless you prove that they came legitimately into your hands we must refuse them the hospitality of our ports.' Why, how do you act in private life? You hear charges and reports compromising the honour of your acquaintance or friend. You may have a moral conviction in your mind that that individual's honour is compromised, but you may not have legal proof of it, and still you may be quite justified in saying to him, 'Until you clear up these charges, which on the face of them criminate you, I must refuse you the hospitality of my house.' I hold that you have the right to say the same thing with regard to these cruizers. But what was the course of the Government in the case of the Alabama? *They told Mr. Adams, the American Minister, that they should give orders to stop the Alabama, either at Queenstown or Nassau. Therefore the principle was recognized in the case of that vessel that you had a right to stop her when she reached your jurisdiction.* I say, therefore, in the same way, prevent their entering your harbours until they give an account of themselves, to show how they became possessed of that vessel. This has a most important bearing, and one so apparent that it must be plain to the apprehensions of every honourable gentleman who hears it."

Duty to detain offending vessels admitted by Great Britain.

Also recognized by France.

The French Government, during the insurrection, practically asserted the same power in the neutral to protect its violated sovereignty. The British Government in 1864 sold a screw gun-boat to persons who proved to be agents of the insurgents. This was done at a time when it was a matter of public notoriety that those agents were in England making great efforts to fit out a navy. The purchasers took the vessel to Calais to complete the equipment. On the way from the Thames to Calais the name of the vessel was changed to the "Rappahannock," the insurgent flag was hoisted, an insurgent officer, holding an insurgent commission, took the command, and the crew were mustered into the service of the insurgents. On arrival at Calais, attempts were made to complete the equipment. The French Government stopped this by placing a man-of-war across the bows, and holding the vessel as a prisoner, and the Rappahannock was then prevented from destroying vessels and commerce, sailing under the flag of a nation with which France was at peace.

The Second Rule of the Treaty.

The second Rule provides that a neutral government is bound not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

A question has been raised whether this rule is understood to apply to the sale of military supplies or arms in the ordinary course of commerce. The United States do not understand that it is intended to apply to such a traffic. They understand it to apply to the use of a neutral port by a belligerent for the *renewal* or *augmentation* of such military supplies or arms for the *naval operations* referred to in the rule. Taken in this sense, the United States maintain that the same obligations are to be found, (expressed in other words,) first, in the Foreign Enlistment Act of 1819; and secondly, in the instructions to the naval forces of Great Britain during the rebellion.

The Tribunal of Arbitration will not fail to observe the breadth of this rule.

The ports or waters of the neutral are not to be made the base of naval operations by a belligerent. Vessels of war may come and go under such rules and regulations as the neutral may prescribe; food and the ordinary stores and supplies of a ship not of a warlike character may be furnished without question, in quantities necessary for immediate wants; the moderate hospitalities which do not infringe upon impartiality may be extended; but no act shall be done to make the neutral port a base of naval operations. Ammunition and military stores for cruisers cannot be obtained there; coal cannot be stored there for successive supplies to the same vessel, nor can it be furnished or obtained in such supplies; prizes cannot be brought there for condemnation. The repairs that humanity demand can be given, but no repairs should add to the strength or efficiency of a vessel, beyond what is absolutely necessary to gain the nearest of its own ports.

In the same sense are to be taken the clauses relating to the renewal or augmentation of military supplies or arms and the recruitment of men. As the vessel enters the port, so is she to leave it, without addition to her effective power of doing injury to the other belligerent. If her magazine is supplied with powder, shot, or shells; if new guns are added to her armament; if pistols or muskets or cutlasses, or other implements of destruction, are put on board; if men are recruited; even if, in these days when steam is a power, an excessive supply of coal is put into her bunkers, the neutral will have failed in the performance of its duty.

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The Third Rule of the Treaty.

The third Rule binds the neutral to exercise the same measure of diligence as required by the first Rule, in order to prevent, in its own ports and waters, and as to all persons within its jurisdiction, any violation of the obligations and duties prescribed by the first and second Rules. The same wakefulness and watchfulness, proportioned to the exigencies of the case and the magnitude of the interests involved, that was required by the first Rule, is likewise required in the performance of the duties prescribed by the second Rule, without which the neutral will have failed in the performance of his duty.

Duty to make compensation for injuries.

The express recognition in the Treaty of an obligation (in case the Tribunal finds that Great Britain has failed to fulfil any of her duties in these respects) to pay to the United States the amount or amounts that may be found due, "*on account of the liability arising from such failure*," makes it unnecessary, in this connection, to do more than to refer to what has already been said on that subject.

Foregoing views in harmony with opinions of European publicists.

The doctrines of International Law which have thus been deduced from the practice of Great Britain are in harmony with the views of the best publicists. The discussions between the two Governments growing out of the acts herein complained of, and unfortunately made necessary by the unwillingness of Great Britain to apply to the United States the same measure of justice which was applied to Spain in 1819, to Portugal in 1827, and which was received by Great Britain from the United States in 1793, have evoked the comments of many writers in England, in America, and on the continent of Europe. For obvious reasons the opinions of the English or American writers favourable to their respective countries—(as, for instance, Professor Bernard in Great Britain or President Woolsey in America)—will not be regarded.

On the 20th of May, 1865,* Mr. Adams had occasion to quote to Lord Russell the opinion of Hautefeuille: "What the obligation of Her Majesty's Government really was, in this instance," he said, "is so clearly laid down by a distinguished writer, notoriously disposed never to exaggerate the duties nor to undervalue the privileges of neutrals, that I will ask the liberty to lay before you his very words: 'Le fait de construire un bâtiment de guerre pour le compte d'un belligérant, ou de l'armer dans les états neutres, est une violation du territoire. Toutes les prises faites par un bâtiment de cette nature sont illégitimes, en quelque lieu qu'elles été faites. Le souverain offensé a le droit de s'en emparer, même de force, si elles sont amenées dans ses ports, et d'en réclamer la restitution lorsqu'elles sont, comme cela arrive en général, conduites dans les ports hors de sa juridiction. Il peut également réclamer le désarmement du bâtiment illégalement armé sur son territoire, et même le détenir, s'il entre dans quelque lieu soumis à sa souveraineté jusqu'à ce qu'il ait été désarmé.'"†

Bluntschli.

The distinguished Dr. Bluntschli, professor at the University of Heidelberg, in his pamphlet, entitled "Opinion impartiale sur la question de l'Alabama et sur la manière de la résoudre," reprinted at Berlin, in 1870, from the *Revue de Droit International*, says as follows:—

"La violation des devoirs d'un état ami, dont l'Angleterre se rendit coupable lors de l'équipement de l'Alabama, fut la circonstance la plus éclatante, mais non la seule dans laquelle se révélèrent les dispositions hostiles du Gouvernement Anglais. Il y eut encore d'autres croiseurs sudistes du même genre. Les nombreux coureurs de blocus qui transportaient en même temps de la contrebande de guerre, avaient tous également leur origine et leurs propriétaires en Angleterre. Partout où les troupes de l'union finirent par l'emporter et s'emparèrent des places ennemies, elles trouvèrent des armes Anglaises et des canons Anglais.

"Tous les faits ainsi allégués n'ont pas la même importance. Mais plusieurs d'entre eux, si tant est qu'il faille les tenir pour avoués ou prouvés,—ce dont nous n'avons pas à juger ici,—doivent certainement être considérés comme constituant une infraction aux devoirs d'un état neutre.

"L'état neutre qui veut garantir sa neutralité doit s'abstenir d'aider aucune des parties belligérantes dans ses opérations de guerre. Il ne peut prêter son territoire pour permettre à l'une des parties d'organiser en lieu sûr des entreprises militaires. Il est obligé de veiller fidèlement à ce que des particuliers n'arment point sur son territoire des vaisseaux de guerre, destinés à être livrés à une des parties belligérantes. (BLUNTSCHLI, *Modernes Völkerrecht*, section 763.)

"Ce devoir est proclamé par la science, et il dérive tant de l'idée de neutralité que des égards auxquels tout état est nécessairement tenu envers les autres états, avec lesquels il vit en paix et amitié.

"La neutralité est la *non-participation* à la guerre. Lorsque l'état neutre soutient

* Vol. III, page 538.

† Hautefeuille. Des droits et des devoirs des nations neutres (Paris, 1849), tome 2me, pp. 79–80.

un des belligérants, il prend part à la guerre en faveur de celui qu'il soutient, et dès lors *il cesse d'être neutre.* L'adversaire est autorisé à voir dans cette participation un acte d'hostilité. Et cela n'est pas seulement vrai quand l'état neutre livre lui-même des troupes ou des vaisseaux de guerre, mais aussi lors qu'il prête à un des belligérants un appui *médiat* en permettant, *tandis qu'il pourrait l'empêcher,* que, de son territoire neutre, on envoie des troupes ou des navires de guerre.

"Partout où le droit de neutralité étend le cercle de son application, il restreint les limites de la guerre et de ses désastreuses conséquences, et il garantit les bienfaits de la paix. Les devoirs de l'état *neutre* envers les *belligérants* ont en substance *les mêmes* que ceux de l'état *ami, en temps de paix,* vis-à-vis des autres états. Aucun état ne peut non plus, en *temps de paix,* permettre que l'on organise sur son territoire des agressions contre un état ami. Tous sont obligés de veiller à ce que leur sol ne devienne pas le point de départ d'entreprises militaires, dirigées contre des états avec lesquels ils sont en paix.

"Ces devoirs internationaux universels sont aussi consacrés, dans le droit public interne, par les législations Anglaise et Américaine. La loi Anglaise du 3 Juillet, 1819, contient à ce sujet (Art. 7) la disposition suivante:—

"'*And be it further enacted,* That if any person within any part of the United Kingdom, or in any part of His Majesty's Dominions beyond the seas, shall, without the leave and license of His Majesty for that purpose first had and obtained as aforesaid, equip, furnish, fit out, or arm, or attempt or endeavour to equip, furnish, fit out, or arm, or procure to be equipped, furnished, fitted out, or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming of any ship or vessel, with intent or in order that such ship or vessel shall be employed in the service of any foreign prince, state, or potentate, or of any foreign colony, province, or part of province, or people, as a transport or store-ship, or with intent to cruise or commit hostilities against any prince, state, or potentate, or against the persons exercising, or assuming to exercise, the powers of government in any colony, province, or part of any province or country, or against the inhabitants of any foreign colony, province, or part of any province or country with whom His Majesty shall not then be at war . . . .'

"Cette loi défend incontestablement tout appui prêté en cas de guerre, peu importe que les parties belligérantes soient des états étrangers reconnus, ou des usurpateurs du pouvoir, ou des colonies ou des provinces révoltées. Donc le Gouvernement Anglais, en permettant intentionnellement ou par une négligence évidente—alors qu'il aurait pu et dû l'empêcher—l'équipement de l'Alabama, a méconnu du même coup un devoir international à l'égard de l'Union Américaine et les prescriptions d'une loi nationale. Par ces motifs il est aussi, d'après les règles du droit des gens, responsable envers l'état lésé.

"Il est notoire que la loi Anglaise est une imitation de la loi Américaine de 1818, sur la neutralité, laquelle ne faisait elle-même que reviser et rétablir la loi antérieure de 1794. C'est même précisément la question de l'équipement de corsaires sur un territoire neutre, au profit d'une partie belligérante, qui donna la première impulsion à cette législation. En 1793, l'Angleterre, qui était à cette époque en guerre avec la France, se plaignit de ce qu'à New-York on équipât des corsaires Français, pour nuire au commerce maritime Anglais. Le Président Washington sévit avec une grande énergie contre cette violation de la neutralité, et, malgré la sympathie de la population Américaine pour les Français, malgré les démarches de l'Ambassadeur Français Genet, il fit saisir les corsaires. Il empêcha de la même manière la construction, en Géorgie, d'un corsaire destiné à entraver la navigation Française. Des deux côtés, il observa consciencieusement et raisonnablement les devoirs d'un état neutre, et détermina ensuite le Congrès à régler ces devoirs par voie législative.*

"Le Ministre Libéral Canning invoqua dans le Parlement Anglais, en 1823, cette honorable attitude de Washington, pour défendre de son côté la loi Anglaise sur la neutralité contre les attaques d'hommes politiques passionnés ou de particuliers égoïstes.†

"L'opinion du monde savant et du monde politique éclairé est presque unanime à reconnaître ces principes, que le peuple Américain et son premier Président ont l'honneur d'avoir proclamés avant tous les autres, dans des textes de lois clairs et formels."

M. Rolin-Jacquemyns, in a notice of the able treatise of Mr. Mountague Bernard, published in the same review in 1871, says:— Rolin-Jacquemyns.

"Dans le cas spécial de l'Alabama, M. M. Bernard insiste sur le fait que ce vaisseau, en sortant du port de Liverpool, n'avait ni un canon ni un mousquet. Il reçut dans la Baie de Moëlfra environ quarante hommes d'équipage qui lui furent

* (Note by M. Bluntschli.)—Bemis, American Neutrality, Boston, 1866, p. 17, seq.

† (Note by M. Bluntschli.)—Phillimore, Intern. Law, III, 217.

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amenés de Liverpool, mais sans aucun matériel de guerre. C'est seulement à Terceira, une des îles Açores, par conséquent dans les eaux Portugaises, qu'il fut rejoint par la barque Agrippine, de Londres, et un peu plus tard par le steamer Bahama, de Liverpool, qui lui amenèrent ses officiers, son armement, les habits de l'équipage et un supplément de charbons.* Un fait analogue s'est présenté pour les corsaires Shenandoah et Géorgie, qui, également construits en Angleterre, en étaient également partis sans armes ni équipement. 'Il est vrai,' dit M. M. Bernard (p. 382), 'que l'armement fourni à ces vaisseaux leur fut expédié de différents ports Anglais, chaque fois évidemment en vertu d'un concert préalable, mais c'est ce que le Gouvernement Anglais ne savait ni ne pouvait savoir;' et plus loin il essaie d'établir la thèse qu'un gouvernement neutre n'est pas obligé, en droit international, d'empêcher la sortie de ses ports de bâtiments ayant l'apparence de vaisseaux de guerre, mais désarmés, alors même que l'on a des raisons de les croire construits pour le service d'un des belligérants. (V. p. 385 et pp. 390 et ss.)

"Il nous semble que l'adoption d'une pareille proposition équivaudrait à l'indication d'un moyen facile d'éluder la règle, qui déclare incompatible avec la neutralité d'un pays l'organisation, sur son territoire, d'expéditions militaires au service d'un des belligérants. Il suffira, s'il s'agit d'une entreprise maritime, de faire partir en deux ou trois fois les éléments qui la constituent; d'abord le vaisseau; puis les hommes, puis les armes, et si tous ces éléments ne se rejoignent que hors des eaux de la puissance neutre qui les a laissés partir, la neutralité sera intacte. Nous pensons que cette interprétation de la loi internationale n'est ni raisonnable ni équitable. Sans doute il ne faut pas demander l'impossible, et puisque le droit international actuel n'empêche pas les neutres de permettre à leurs sujets l'exportation d'armes et de munitions de guerre à l'usage des belligérants, on ne peut exiger que l'on arrête les armes dans le cas dont il s'agit. Mais cette tolérance n'est qu'une raison de plus pour se montrer scrupuleux à l'égard des vaisseaux et des hommes. La considération que la fraude, même confinée dans ces limites, sera encore praticable, que les hommes pourront être nominalement engagés pour une destination pacifique, que la différence entre les vaisseaux de guerre et ceux de commerce ne se reconnait pas toujours à des caractères certains, peut servir, dans les cas particuliers, à excuser ou à justifier la conduite du Gouvernement neutre qui se laisse tromper aux apparences. Mais dans l'espèce ces motifs de justification ou d'excuse n'existent certainement pas. Bien que l'Alabama n'ait été armée ni dans la Mersey ni dans la baie de Moëlfra, il est certain que, dès le 24 Juin (plus d'un mois avant son départ), M. Adams avait informé officiellement Lord Russell qu'un nouveau et puissant *steamer* était prêt à quitter Liverpool, dans le dessein manifeste de servir à la guerre maritime, et que les parties intéressées dans l'entreprise étaient des personnes bien connues à Liverpool comme agents et officiers des insurgés sudistes.† Il est certain que, le 21 Juillet, comme le Collecteur et les autorités des Douanes avaient prétendu ne pouvoir agir sur des renseignements vagues, le Consul des Etats Unis leur remit six affidavits, et que le 23 Juillet il leur en remit deux autres; que trois de ces documents étaient les dépositions de marins engagés à bord de l'Alabama, et attestant comme chose notoire 'que le vaisseau était un vaisseau de combat (*a fighting vessel*), construit et aménagé comme tel, avec de grandes quantités de poudre, de charbon, et de provisions; que les déposants avaient été enrôles par des personnes bien connues comme agents des Etats Confédérés; qu'ils n'avaient pas encore d'articles formels d'engagement, mais qu'il était généralement su à bord que le vaisseau était un corsaire du Gouvernement Fédéral, destiné à combattre les Etats Unis en vertu d'une commission de M. Jefferson Davis.‡ Un des marins ajoutait cette déclaration caractéristique, qu'il avait été déjà capturé comme coureur de blocus, et que son idée fixe était de retourner dans le sud 'pour se venger sur les gens du nord de ce qu'ils lui avaient pris ses habits.' On lui avait promis que cette occasion ne tarderait pas à se présenter.§

"A ces affidavits était jointe une consultation émanée d'un des premiers avocats d'Angleterre, M. Collier, lequel, sur le vu des pièces, émettait l'opinion qu'une violation du *Foreign Enlistment Act* était établie, et que le Collecteur des Douanes avait le droit et le devoir d'arrêter le vaisseau.

* (Note by M. Rolin-Jacquemyns.)—Ce point n'était pas nettement indiqué dans la version donnée par M. Sumner: voir t. I, p. 452, de la Revue, ainsi que l'article de M. Bluntschli. Voir aussi les publications citées plus haut de MM. Esperson et Pierantoni.

† M. Bernard, p. 339.

‡ (Note by M. Rolin-Jacquemyns.)—"It is well known by the hands on board that the vessel is a privateer for the Confederate Government to act against the United States under a commission from Mr. Jefferson Davis." Affid. No. 1, Bernard, p. 363.

§ (Note by M. Rolin-Jacquemyns.)—Affid. No. 8, p. 369:—"I wanted to get South in order to have retaliation of the Northerners for robbing me of my clothes. He [l'agent des Etats du Sud] said that if I went with him in his vessel I should very shortly have that opportunity."

"Six jours encore s'écoulèrent avant le rapport des jurisconsultes officiels (Law Officers). Ce fut le 29 Juillet seulement qu'ils conclurent également à ce que le vaisseau fût arrêté. Mais le 28, le corsaire, averti qu'on allait l'empêcher de partir, se hâtait de quitter, *quatre jours plus tôt qu'il ne se l'était proposé*, le bassin où il se trouvait, et le 29 il prenait la mer.* Cependant il ne quitta les eaux Anglaises que le 31.

"M. Bernard ne croit pas que la sortie de l'Alabama, effectuée dans ces circonstances, suffise pour justifier l'imputation de *faute grave*, de *coupable négligence*, à la charge du Gouvernement Anglais. Il convient toutefois que ni un Anglais ni un Américain n'a peut-être le droit d'avoir sur cette question une confiance implicite dans son proper jugement. Mais il ne voit pas ce qui l'empêcherait de dire que l'accusation lui paraît *légère* et *déraisonnable*. Quant à nous, nous ne voyons pas comment il serait possible à quelqu'un qui n'est ni Anglais ni Américain de partager cette patriotique indulgence."

Mr. Theodore Ortolan, of the French navy, from his practical experience, as well as from his theoretical knowledge and his high reputation as a publicist, is recognized as a writer of authority on these subjects. In a late edition of his "Diplomatie de la Mer"† he discusses the subject of neutral obligations with special reference to the differences between Great Britain and the United States. He says:—

"Si l'on suppose un navire construit sur le territoire neutre, non pas sur commande d'un belligérant ou par suite d'un traité ostensible ou dissimulé avec ce belligérant, mais en vue d'un dessein quelconque, soit de navigation commerciale, soit tout autre, et que ce navire, déjà par lui-même propre à la guerre ou de nature à être converti à cet usage, une fois sorti des ports de la nation neutre, soit vendu, dans le cours de sa navigation, occasionnellement, à l'un des belligérants, et se mette à naviguer en destination directe pour ce belligérant: un tel navire dans de telles circonstances tombe uniquement sous le coup des règles relatives à la contrebande de guerre. Il est sujet à être arrêté et confisqué par l'ennemi qui pourra s'en emparer, mais sans qu'aucun grief de violation des devoirs de la neutralité puisse sortir de ce fait contre l'état neutre pour n'avoir pas défendu à ses nationaux de telles ventes ou ne les avoir pas réprimées. C'est une opération de trafic qui a eu lieu, trafic de contrebande de guerre, dont aucune circonstance particulière n'est venue changer le caractère.

"Tel fut, en l'année 1800, le cas du navire Américain le Brutus, capturé par les Anglais et jugé de bonne prise par la cour d'amirauté d'Halifax.

* * * * * * *

"Mais la situation change, la contrebande de guerre n'est plus la question principale, d'autres règles du droit des gens interviennent et modifient profondément la solution, si l'on suppose qu'il s'agisse de bâtiments de guerre construits, armés ou équipés sur un territoire neutre pour le compte d'un belligérant, par suite d'arrangement pris à l'avance avec lui, sous la forme d'un contrat commercial quelconque: vente, commission, louage d'industrie ou de travail; que les arrangements aient été pris ostensiblement ou qu'ils le soient d'une manière secrète ou déguisée; car la loyauté est une condition essentielle dans la solution des difficultés internationales, et sous le couvert de fausses apparences il faut toujours aller au fond des choses. Il y a ici, incontestablement, une seconde hypothèse qu'il importe de distinguer soigneusement de la précédente.

"Nous nous rattacherons, pour résoudre en droit des gens les difficultés que présente cette nouvelle situation, à un principe universellement établi, qui se formule en ce peu des mots: 'Inviolabilité du territoire neutre.' Cette inviolabilité est un droit pour l'état neutre, dont le territoire ne doit pas être atteint par les faits de guerre, mais elle impose aussi à ce même état neutre une étroite obligation, celle de ne pas permettre, celle d'empêcher, activement au besoin, l'emploi de ce territoire par l'une des parties ou au profit de l'une des parties belligérantes, dans un but hostile à l'autre partie.

"Les publicistes en crédit ne font aucun doute pour ce qui concerne l'armement et l'équipement dans un port neutre de bâtiments de guerre destinés à accroître les forces des belligérants. Ils s'accordent pour reconnaître l'illégalité de ces armements ou équipements, comme une infraction de la part de l'état neutre qui les tolérerait aux devoirs de la neutralité.

"N'est-il pas évident qu'il en doit être de même *a fortiori* de la construction de pareils bâtiments, lorsque cette construction a lieu dans les conditions prévues en notre seconde hypothèse?"

* (Note by M Rolin-Jacquemyns.)—Affidavit de Clarence Yonge, cité par M. Bernard, p. 345, en note.

† Diplomatie de la Mer, tome 2, page 208.

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The attention of the Italian jurists and publicists has also been attracted to the discussion. A learned and exhaustive pamphlet appeared at Florence in 1870 from the pen of Professor Pierantoni. Without claiming the extreme rights which this learned gentleman concedes to them, the United States invite the attention of the Tribunal of Arbitration to the following expression of opinion:—

Pierantoni.

"Dopo che nella sez. XXII, il professor di Pavia sostiene che nè il Governo Inglese nè gli altri governi debbano assumere la giuridica responsabilità delle depredazioni commesse dai corsari separatisti, nella seguente sez. XXIII, passa ad esaminare il secondo suo assunto: se la neutralità fu violata dalla Gran Bretagna per la costruzione dell' Alabama, legno corsaro, e pel consentito armamento nei cantieri Inglesi. Egli in brevi termini chiama l'Inghilterra responsabile dei soli danni cagionati dalle depredazioni del detto legno, scrivendo: 'Di queste perdite soltanto deve rispondere il Governo Britannico, per essere le medesime una conseguenza immediata di un fatto illegittimo, che ebbe luogo da sua parte, violando apertamente le leggi della neutralità.'

"Io non posso acconsentire a questa mite conchiusione, anzi me ne discosto per considerazioni di fatto e di diritto. In linea di fatto, io non intendo come il chiarissimo autore escluda le altre specie di offese, che il Sumner ed il suo Governo adducono di aver patite dalla nazione Americana [*sic*]. Nella esposizione dell' argomento ho citato i tre capi, nei quali riassume il Sumner la serie delle offese patite. Il caso del vascello costrutto a Liverpool è il più grave; ma gli Americani sostengono che avvennero altri simiglianti casi, e sino a prova contraria non è lecito circoscrivere il numero dei fatti addotti come offensivi.

"In diritto, io non so, chè in questa seconda parte lo scrittore non ricorre ad alcuna dimostrazione dottrinale, perchè egli limiti le conseguenze della violatta neutralità al semplice rifacimento de' danni cagionati dal legno corsaro.

"I principii della neutralità soltanto accennati dimostrano più grave la responsabilità del governo che la violò."*

Lord Westbury

Lastly, the United States cite, for the consideration of the Tribunal, the authority of Lord Westbury, Lord High Chancellor of England during the rebellion, who on the 7th day of March, 1868, in a discussion in the House of Lords on these questions, said: "There was one rule of conduct which undoubtedly civilized nations had agreed to observe, and it was that the territory of a neutral should not be the base of military operations by one of two belligerents against the other. In speaking of the base of operations he must, to a certain degree, differ from the noble earl. [Earl Russell.] *It was not a question whether armed ships had actually left our shores; but it was a question whether ships with a view to war had been built in our ports by one of two belligerents. They need not have been armed; but if they had been laid down and built with a view to warlike operations by one of two belligerents, and this was knowingly permitted to be done by a neutral Power, it was unquestionably a breach of neutrality.*"†

The public and official acts of other European Governments have also been in harmony with the principles which are claimed in this paper to have been violated by Great Britain.

Case of Swedish vessels.

During the war between Spain and the Spanish-American Colonies, the Government of Sweden sold, in the ordinary course of commerce, to some private individuals, some vessels of war, after first dismantling them of their armanent, and reducing them to a much less formidable condition than the Alabama was in when she left Liverpool. Some of the correspondence which took place between the Spanish Minister at Stockholm, the Russian Minister, and the Swedish Government may be found in *De Marten's Causes Célèbres*, Vol. 5, page 229, *et seq.* A good *résumé* of the whole case may be found in De Cussy,‡ to which the United States invite the attention of the Tribunal of Arbitration in full, as follows:—

"Dans l'année 1829, le Roi de Suède prit la résolution de faire vendre, quand l'occasion s'en présenterait, quelques bâtiments de guerre dont la construction remontait à plus de vingt-cinq ans, ordonnant d'ailleurs de les remplacer immédiatement par des bâtiments nouveaux, en appliquant aux frais de construction de ceux-ci le produit de la vente des premiers: le but et les intentions du roi, en cette circonstance, étaient de rendre, au sein de la paix, quelque activité aux chantiers de la marine royale, par la construction de cinq ou six vaisseaux de guerre.

"La Suède fit proposer à l'Espagne d'acheter ces bâtiments, tant par l'intermédiaire de M. de Moreno, Envoyé de la Cour de Madrid à Stockholm, que par celui de M. de Lorichs, Chargé d'Affaires de Sa Majesté Suédoise auprès du Gouvernement de

* La Questione Anglo-Americana dell' Alabama per l'Avv. A. Pierantoni: Firenze, 1870, pp. 46–47.

† Hansard, 3d series, Vol. CXCI, pp. 346–347.

‡ De Cussy, Droit Maritime, tome 2, page 402.

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Sa Majesté Catholique. Le Ministère fit également proposer, en même temps, à la Cour d'Espagne de lui céder, à des prix modérés, de la poudre et des projectiles, et de mettre les chantiers de la marine royale de Suède à la disposition de Sa Majesté Catholique.

"La Cour de Madrid déclina ces propositions diverses: l'Espagne possédait, répondit M. de Moreno, tous les éléments nécessaires pour la fabrication de la poudre, et un nombre suffisant de vaisseaux de guerre; l'argent seul manquait pour mettre en activité les moulins à poudre et pour ravitailler les bâtiments.

"Le Ministre de la Marine de Sa Majesté Suédoise avisa donc aux moyens nécessaires pour trouver des acquéreurs. Six vaisseaux, fort bons encore, bien que leur construction remontât à 25 et 30 ans, furent déclarés réformés, et leur vente fut annoncée; c'étaient le vaisseau *Försigtigheten* (la Prevoyance) et les frégates *l'Eurydice, la Camille, la Manligheten, le Chapman, et la Tapperheten.*

"Avant de procéder à la vente, qui eut lieu au commencement de l'année 1825, le Ministre Suédois fit renouveler la proposition d'achat des dits bâtiments au Chargé d'Affaires d'Espagne qui se trouvait encore, à cette époque, à Stockholm, ainsi qu'à son successeur M. d'Alvarado.

"Sur le refus de la Légation Espagnole d'entrer en négociation pour l'acquisition des bâtiments désignés, le Gouvernement Suédois accepta les offres que lui fit la maison de commerce, établie à Stockholm, Michaelson et Benedicks; celle-ci peu après céda les bâtiments dont elle avait fait l'acquisition à la maison Anglaise Barclay, Herring, Richardson et Cie., de Londres.

"Or, cette dernière maison ayant, ainsi que la maison Goldsmith, de Londres, fourni les fonds de l'emprunt contracté, peu de temps avant, par le Mexique, l'Espagne crut reconnaître, dans la circonstauce de l'achat des bâtiments réformés fait par la maison Barclay, Herring, Richardson et Cie., des mains de la maison de Stockholm, une intention de *simulation* ayant pour but d'éloigner la pensée que le Gouvernement Suédois était informé (quand il accepta les offres de la maison Michaelson et Benedicks, de Stockholm,) de la destination qui serait prochainement donnée aux vaisseaux de guerre vendus par le Ministre de la Marine.

"Pour M. d'Alvarado, Chargé d'Affaires d'Espagne, il ne semblait pas douteux que les bâtiments achetés, dans le principe, par la maison Michaelson et Benedicks, pour passer, peu de temps après, entre les mains de la maison Barclay, Herring, Richardson et Compagnie qui se trouvait en relations d'affaires d'argent avec *la colonie révoltée*, étaient destinés à renforcer les armements maritimes des insurgés de l'Amérique Espagnole.

"C'est dans cette conviction, fondée, disait-il, sur la notoriété publique à Stockholm, à Carlscrona, à Gothenbourg, et à Londres, que M. d'Alvarado, dans la note qu'il adressa, le 1 Juillet, 1825, à M. le comte de Wetterstedt, Ministre des Affaires Etrangères de Suède, et par laquelle il faisait appel à la loyauté de Sa Majesté Suédoise, dont la religion avait sans doute été surprise, conjura le Gouvernement du Roi de résilier les contrats de vente, et avant tout de retenir dans ses ports quatre des bâtiments vendus qui s'y trouvaient encore.

"Dans sa réponse au Chargé d'Affaires d'Espagne, le Ministère Suédois déclara que si le Gouvernement de Sa Majesté Suédoise avait vendue, à des négociations, quelques vaisseaux de guerre, qu'on avait jugé à-propos de réformer, en se réservant d'ailleurs la moitié de l'armement, il n'avait fait qu'exercer son droit que personne ne pouvait lui contester. 'Son action,' continuait le Ministre, 's'arrête-là; et si M. d'Alvarado peut, ou croit pouvoir, prouver que les acquéreurs ont l'intention de faire de ces bâtiments un usage qui pourrait devenir nuisible à l'Espagne, c'est auprès du Gouvernement Britannique que sa Cour doit agir, lui seul pouvant exercer sur ses sujets la surveillance qui lui conviendra. Mais vouloir, sur de simples présomptions, arrêter une vente dans *la crainte d'un danger à venir, qui pourrait en résulter*, ce serait anéantir l'activité et le développement de toutes les transactions commerciales.

"A la suite de diverses notes échangées entre le Ministre Suédois et M. d'Alvarado, qui obtint des envoyés des puissances amies et alliées de l'Espagne, résidant à Stockholm, d'appuyer ses réclamations, le Gouvernement de Sa Majesté le Roi de Suède, voulant donner un témoignage de la bonne foi qui l'avait guidé dans toute cette affaire, consentit à résilier les contrats de vente qui avaient été passés, en dernier lieu, à l'occasion de la *Prévoyance*, de *l'Eurydice*, et de *la Camille*.

"Cette résiliation entraîna, pour le Gouvernement Suédois, une perte d'argent assez considérable, que l'on a évaluée à plus de 60,000 francs.

"Les membres de l'opposition, dans la Diète tenue en 1828, cherchèrent à établir que le Gouvernement du Roi *avait violé la constitution* (éternel et banal argument de toutes les *oppositions* dans tous les pays!) non-seulement pour avoir vendu des bâti-

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ments de la marine de l'état sans avoir obtenu préalablement l'assentiment des Etats; mais aussi pour avoir depuis permis la résiliation des marchés, et s'être soumis, de cette sorte, à une perte en argent d'un chiffre élevé. Une commission fut nommée pour examiner la conduite du Gouvernement, laquelle, après leur examen, fut trouvée irrépréhensible.

" Les Etats sollicitèrent, il est vrai, du Roi que Sa Majesté voulût bien prendre les mesures nécessaires pour faire rentrer au trésor les sommes que le Gouvernement avait cru devoir sacrifier, quand il se vit mieux éclairé sur les inconvénients résultant de la vente effectuée et lorsqu'il céda aux représentations diplomatiques dont cette vente était devenue l'objet; mais la mort du Comte de Cederström, chef de l'administration de la marine, *contre lequel la demande paraissait dirigée*, mit fin à cette affaire; elle ne fut pas reprise, en effet, dans le cours des séances de la Diète suivante.

" Le Gouvernement Suédois en résiliant les contrats de vente, et en s'imposant un sacrifice d'argent en cette circonstance, agit dignement et loyalement; aussi longtemps qu'il ne vit dans la vente des bâtiments de guerre réformés, et d'une partie de leur armement, qu'une opération purement commerciale, dont les résultats devaient profiter uniquement, tant au commerce d'aucun acquéreur qu'au trésor de l'état, au moment où de nouvelles constructions navales allaient être entreprises, le Gouvernement Suédois était parfaitement dans son droit; mais du jour où il put croire que les bâtiments achetés par la maison de Stockholm et revendus à la maison de Londres étaient destinés effectivement à renforcer les armements maritimes d'une colonie *que l'Espagne considérait encore comme insurgée contre son autorité* et dont l'indépendance politique n'avait encore été reconnue par aucun des grands Etats Européens, la Suède, alliée ou amie de l'Espagne, ne pouvait se prêter, sans porter atteinte au principe de la neutralité, à ce que ses vaisseaux de guerre réformés concourussent à accroître les forces navales du Mexique.

" Ce ne fut que le 26 Décembre, 1826, que la Grande Bretagne signa, à Londres, un Traité public avec les Etats Mexicains; dans l'année 1827, la France, les Pays-Bas, le Hanovre, le Danemark suivirent cet exemple, en signant, avec le Gouvernement Mexicain, des Traités de Commerce et de Navigation; le 28 Décembre, 1836, enfin, l'Espagne, comprenant l'inutilité de continuer la lutte contre des colonies qui s'étaient séparées d'elle sans retour, conclut avec le Mexique un Traité de Paix et d'Amitié.

" En agissant autrement qu'elle le fit, c'est-à-dire, en persistant à repousser les réclamations du Chargé d'Affaires d'Espagne, la Suède, nous le répétons, aurait manqué aux devoirs et aux obligations de la neutralité. C'eût été se prêter à favoriser l'un des deux belligérants (et, dans le cas actuel, en 1825, le belligérant favorisé était un peuple dont la condition politique était encore indéterminée) que de ne pas prendre les mesures nécessaires pour que les bâtiments de guerre réformés, vendus avec un demi-armement, n'allassent pas accroître les forces navales d'une colonie de l'Espagne, insurgée contre l'autorité du Roi Catholique."

Offending vessels not simply contraband of war.

It may possibly be asserted that the construction, or the fitting out, or the arming, or the equipment by neutrals of vessels of war intended for the service of a belligerent were, before the Treaty of Washington, to be regarded as standing upon the same footing with the dealings in articles ordinarily esteemed contraband of war. Should this be the case, the United States might content themselves with a reference to the history of the legislation of the two countries, as a complete answer to such an assertion. While the subjects or citizens of either country have been left by law free to manufacture, or sell muskets or gunpowder, or to export them at their own risk, even if known to be for the use of a belligerent, the legislatures, the executives, and the judiciaries of both Great Britain and the United States, have joined the civilized world in saying that a vessel of war, intended for the use of a belligerent, is not an article in which the individual subject or citizen of a neutral State may deal, subject to the liability to capture as contraband by the other belligerent. Such a vessel has been and is regarded as organized war—more clearly organized war than was that unarmed expedition which left Plymouth in 1828 for Portugal,* and was arrested by the British navy at the same Terceira to which the Alabama fled to receive the arms and ammunition that she failed to take on board at Liverpool, either because the purposes of the

* During the contest in Portugal between Don Miguel and Donna Maria II, an unarmed expedition of the adherents of Donna Maria left Portsmouth, ostensibly for Brazil, but really for the Azores. The British Government of that day pursued it to Terceira, fired into it, and broke it up; and they were sustained in the House of Lords by a vote of 126 to 31, and in the House of Commons by a vote of 191 to 78 (Hansard for 1830, Vol. XXIII. See also Annual Register for 1829, and Phillimore's International Law, Vol. I, page 229, et seq.). The Tribunal of Arbitration will not fail to observe how differently the powers and duties of the Government were constructed by the British Government when it was a question of the disintegration and disruption of the commerce of the United States.

Foreign Office were surreptitiously revealed, or because the insurgent agents had reason to believe that they could evade the law by the construction of the vessel on one side of the River Mersey, the collection of the armament on the other side of it, and the putting them together more than three miles out at sea.

Duties of a Neutral.

Offending vessels not simply contraband of war.

It is not, however, necessary for the United States to rely in this respect upon the action of the several branches of the Governments of the two countries. The question has been considered by several of the leading publicists of the Continent. Ortolan, in his "Diplomatie de la Mer,"* says, in addition to what has already been cited:

Opinion of Ortolan.

"A part toute prohibition faite législativement par telle ou telle nation, il faut, en droit international, considérer comme des actes décidément contraires à la neutralité, l'équipement et l'armement et, à plus forte raison, la construction dans les ports neutres de bâtiments de guerre appartenant aux belligérents, ou destinés, par concert ostensible ou dissimulé avec les belligérants, à être remis en leur pouvoir. Nous croyons fermement qu'il est impossible d'assimiler de pareils actes à la contrebande de guerre proprement dite, et que l'obligation pour un état neutre de s'opposer à ce qu'ils aient lieu sur son territoire est indépendante de toute loi intérieure ou particulière à cet état; que la loi intérieure peut et doit sanctionner cette obligation, mais qu'elle ne saurait ni la créer ni la détruire, parceque c'est une obligation qui résulte uniquement de la loi internationale, laquelle défend d'user, dans un but hostile, du territoire neutre."

Heffter,† the distinguished German publicist, says to the same effect:

And of Heffter.

"C'est un devoir général pour les peuples restés spectateurs tranquilles de la lutte, de n'y prendre aucune part active, ni de participer directement aux actes de la guerre. Les gouvernements, les sujets étrangers qui fournissent à l'un des belligérants des secours directs, commettent une violation du devoir de la neutralité, un acte d'immixtion dans les hostilités, auquel l'adversaire est en droit de s'opposer par tous les moyens. Dans la pratique on regarde comme de tels actes d'hostilité:

"1°, le transport volontaire des soldats, matelots et autres hommes de guerre;

"2°, la construction dans les ports neutres de vaisseaux de guerre ou de commerce pour le compte de l'ennemi dès leur sortie;

"3°, le transport volontaire de dépêches de l'un des belligérants.

"Ces diverses contraventions, lorsqu'elle sont régulièrement constatées, entrainent la saisie et la confiscation du navire employé au transport. La confiscation s'étend également à la cargaison, s'il est établi que les propriétaires avaient connaissance du but illicite du voyage. Toutefois cette pénalité n'est pas toujours exécutée à leur égard avec la même sévérité. En réalité elle constitue un acte de légitime défense auquel le neutre qui se rend complice de l'un des belligérants ne saurait échapper du côté de l'adversaire.

"En dehors des cas qui viennent d'être énumérés, il existe encore un certain nombre d'objets dont le commerce est regardé d'une manière plus ou moins générale dans la pratique des états comme prohibé. Il constitue la contrebande de guerre proprement dite."

Case of the Santisima Trinidad.

Without wearying the patience of the Tribunal in the further discussion of this question, it will be assumed that a vessel of war is not to be confounded with ordinary contraband of war. Indeed, the only respectable authority which has been cited even apparently to the contrary, is an observation which Mr. Justice Story thrust into the opinion of the Supreme Court of the United States, upon the case of the Santisima Trinidad.‡ If that eminent jurist had said that a vessel of war was to be regarded in public law as an article which might be legitimately constructed, fitted out, armed, equipped, or dealt in by a person in the territory of a neutral, with the intent that it should enter the service of a belligerent, subject only to a liability to capture as contraband of war by the other belligerent, the United States would have been forced, with great regret, to ask this Tribunal to disregard an opinion so at variance with common sense, and with the whole current of the action of nations. Happily they are under no necessity of casting an imputation on the memory of one of their brightest juridical ornaments.

During the last war between the United States and Great Britain a privateer, called the Monmouth, was constructed at Baltimore, and cruised against the enemy. After the peace she was stripped of her armament, and converted into a brig. She was subsequently loaded with munitions of war, armed with a portion of her original armament, and sent to Buenos Ayres (which was then a revolted colony of Spain recognised

* Diplomatie de la Mer, Ortolan, tome 2, page 214.

† Heffter, Droit International (French translation by Jules Bergson, Paris), page 296.

‡ 17 Wheaton's Reports, page 283.

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as a belligerent, but not recognised as an independent government), to find a market for her munitions of war. The supercargo was also authorised "to sell the vessel to the Government of Buenos Ayres *if he could obtain a suitable price.*" He did sell her, and she went into the service of that Government as a man-of-war. She subsequently put into a port of the United States, and while there enlisted thirty new men, and took with her, when she put to sea, the newly-enlisted men, and a tender, which carried some mounted guns and twenty-five men, After this addition to her effective power for injury, assisted by the tender, she captured the Spanish vessel Santisima Trinidad, and carried her cargo into Norfolk, one of the ports of the United States. On the instigation of the Spanish authorities, proceedings were taken for the restitution of this property, on the ground, first, that the Independencia had been originally illegally fitted out, armed, or equipped in the United States; secondly, that she had, after entering the service of Buenos Ayres, illegally recruited men and augmented her force within the United States. The court decreed a restitution of the property on the second ground. Any remarks, therefore, upon the first point were outside of the requirements of the case, and, under the American practice, would be regarded as without authority; but inasmuch as they were made by one of the most eminent writers on public law, they deserve the consideration which they have received. Taking them in connection with the facts as shown in evidence, it is clear that the distinguished judge intended to confine his statement to the case of a vessel of war equipped and dispatched as a commercial venture, without previous arrangement or understanding with the belligerent, and at the sole risk of the owner. "It is apparent," he says, "that she was sent to Buenos Ayres on a commercial venture." The whole of his subsequent remarks turned upon the absence of an intent, in Baltimore, in the mind of the owner, before she sailed, that she should, in any and at all events, whether sold or not, go into the service of the belligerent.

The judges who were brought in contract with the witnesses in that case, and had access to all the original papers, and knew personally both the men and the facts, and who, therefore, had opportunities which are denied to us of judging of the merits of the case, seem to have reachedt he conclusion that this particular transaction was a purely commerical venture; and they placed the decree of restitution of the captured property upon later violations of law. It may, however, be said that the ordinary experiences of human life show that such deeds border upon the debatable ground between good faith and fraud. The court which decided that case evidently did so on the impressions which the judges received from the particular evidence before them; for, on the very next day, the most illustrious of American Judges, John Marshall, the Chief Justice of the United States in the parallel case of the Irresistible, a vessel built at Baltimore, sent to Buenos Ayres, and there commissioned as a privateer, pronouncing the opinion of the same court, declared that the facts as to the Irresistible showed a violation of the laws of the United States in the original construction, equipment, and arming of the vessel; and that, should the court decide otherwise, *the laws for the preservation of the neutrality of the country would be completely eluded.** In justice to the highest court of the United States, these two cases should be read together by all persons wishing to know its views upon the duties of a neutral nation in time of war, since if there be any difference in the principles involved in the two cases, then the true construction of the law is to be found in the carefully considered language of the court in the case of the Gran Para. The cases were both argued in February 1822: the Gran Para upon the 20th, and the Santisima Trinidad on the 28th. The opinions were delivered in March: that of the Santisima Trinidad on the 12th; that of the Gran Para on the 13th. There can be no doubt that they were considered together in the consultation-room. Therefore any apparently broad or ill considered expressions in the opinion rendered on the 12th of March are to be regarded as limited and corrected by the carefully considered expressions of the Chief Justice on the following day.

Controlled by the case of the Gran Para.

Effect of a commission of the offender as a vessel of war.

Having thus demonstrated that the principles for which the United States contend have been recognized by the statesmen, the jurists, the publicists, and the legislators of Great Britain; that they have the approbation of the most eminent authorities upon the continent of Europe; and that they have been regarded by the other Powers of Europe in their dealing with each other, it only remains to shew how the liability of the neutral for the acts of cruisers illegally built, or equipped, or fitted out, or armed within its ports, may be terminated.

It has been intimated, in the course of the discussions upon these questions between the two Governments, that it may be said, on the part of Great Britain, that its power to interfere with, to arrest, or to detain either of the belligerent cruisers

* The Gran Para, 7 Wheaton's Reports, 471.

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whose acts are complained of ceased when it was commissioned as a man-of-war; and that, consequently, its liability for their actions ceased.

Effect of a commission of the offender as a vessel of war.

The United States might well content themselves with calling the attention of the Tribunal of Arbitration to the utter uselessness of discussing these questions, if the liability to make compensation for the wrong can be escaped in such a frivolous way. It is well known how the several British-built and British-manned cruisers got into the service of the insurgents. Few of them ever saw the line of the coast of the Southern insurgent States. The "Florida," indeed, entered the harbour of Mobile, but she passed the blockading squadron as a British man-of-war. In most cases the commissions went out from England—from a branch office of the insurgent Navy Department, established and maintained in Liverpool at the cost and expense of the insurgent so-called Government. From this office the sailing orders of the vessels were issued; here their commanders received their instructions; and hence they departed to assume their commands and to begin the work of destruction. They played the comedy of completing on the high seas what had been carried to the verge of completion in England. The parallel is complete between these commissions and those issued by Genêt in 1793, which were disregarded by the United States at the instance of Great Britain. If a piece of paper, emanating through an English office, from men who had no nationality recognised by Great Britain, and who had no open port into which a vessel could go unmolested, was potent not only to legalize the depredations of British built and manned cruisers upon the commerce of the United States, but also to release the responsibility of Great Britain therefor, then this arbitration is indeed a farce. Such, however, cannot be the case.

Opinion of Sir Roundell Palmer.

Sir Roundell Palmer, the Attorney-General of Lord Palmerston's Cabinet, as well as of the present Government, well said, in the House of Commons, in 1864, when defending the course of Great Britain as to the Tuscaloosa, a tender of the Alabama, "Can it be said that a neutral Sovereign has not the right to make orders for the preservation of his own neutrality, or that any foreign Power whatever violating these orders, provided it be done wilfully or fraudulently, is protected to any extent, by International Law, within the neutral territory, or has the right to complain, on the ground of International Law, of any means which the neutral Sovereign may see fit to adopt for the assertion of his territorial rights?" * * * "It is a mere question of practical discretion, judgment, and moderation what is the proper way of vindicating the offended dignity of the neutral Sovereign."*

Opinion of Chief Justice Marshall.

The United States do not deny the force of the commission of a man-of-war issuing from a recognized power. On the contrary, they point with a pardonable pride to the exhaustive language of Chief Justice Marshall on this subject† as evidence of what they understand to be the practice of nations. Nor do they deny that since Great Britain had, however precipitately and unjustly, recognized the existence of a civil war between the United States and the insurgents, and avowed a determination to remain neutral between the parties, she might, without a violation of the law of nations, commit the further injustice of allowing to such vessels of war of the insurgents as had not been built, armed, equipped, furnished, fitted out, supplied, or manned within her territory, in violation of her duty to the United States, the same rights of asylum, hospitality, and intercourse which she conceded to the vessels of war of the United States. They do, however, most confidently deny that the receipt of a commission by a vessel like the Alabama, or the Florida, or the Georgia, or the Shenandoah, exempted Great Britain from the liability growing out of the violation of her neutrality. To this point they are fortunately able to cite two from the many pertinent cases adjudicated in the Supreme Court of the United States, which show directly what the public law in this respect is understood to be, not only by the United States but also by Spain and by Portugal.

Decision of the Supreme Court of the United States in the cases of the Santisima Trinidad and the Gran Para.

The first is the case of the Santisima Trinidad,‡ the facts of which have already been given. The property for which restitution was claimed in this case was Spanish. The libel was filed by the Spanish Consul at Norfolk on behalf of the owners. The capture was shown to have been made after a commission to the vessel, expressly recognized by the Court rendering the decision. Nevertheless, restitution was decreed on the ground of an illegal increase of armament in the neutral territory after the commission.

The second case is that of the Gran Para,§ also already alluded to. The libel

* Hansard, 3d series, Vol. CLXXIV, page 1595.
† The Schooner Exchange against McFadden *et als.*, 7 Cranch's Reports, 116.
‡ 7 Wheaton, 283.
§ 7 Wheaton, 471.

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Decision of the Supreme Court of the United States in the cases of the Santisima Trinidad and the Gran Para.

was filed by the Consul-General of Portugal. The opinion of the Court was given by Chief Justice Marshall. The facts are set forth so clearly in the opinion that no other statement is necessary. The Chief Justice, in announcing the judgment of the Court, said :—

"The principle is now firmly settled that prizes made by vessels which have violated the Acts of Congress that have been enacted for the preservation of the neutrality of the United States, if brought within their territory, shall be restored. The only question, therefore, is, does this case come within the principle ?

"That the Irresistible was purchased, and that she sailed out of the port of Baltimore, armed and manned as a vessel of war, for the purpose of being employed as a cruiser against a nation with whom the United States were at peace, is too clear for controversy. That the arms and ammunition were cleared out as cargo cannot vary the case. Nor is it thought to be material that the men were enlisted in form as for a common mercantile voyage. There is nothing resembling a commercial adventure in any part of the transaction. The vessel was constructed for war and not for commerce. There was no cargo on board but what was adapted to the purposes of war. The crew was too numerous for a merchantman and was sufficient for a privateer. These circumstances demonstrate the intent with which the Irresistible sailed out of the port of Baltimore. But she was not commissioned to act as a privateer, nor did she attempt to act as one until she reached the River La Plata, when a commission was obtained, and the crew re-enlisted. This Court has never decided that the offence adheres to the vessel, whatever changes may have taken place, and cannot be deposited at the termination of the cruize in preparing for which it was committed; and as the Irresistible made no prize on her passage from Baltimore to the River of La Plata, it is contended that her offence was deposited there, and that the Court cannot connect her subsequent cruize with the transactions at Baltimore.

"If this were to be admitted in such a case as this, the laws for the preservation of our neutrality would be completely eluded, so far as this enforcement depends on the restitution of prizes made in violation of them. Vessels completely fitted in our ports for military operations need only sail to a belligerent port, and there, after obtaining a commission, go through the ceremony of discharging and re-enlisting their crew, to become perfectly legitimate cruizers, purified from every taint contracted at the place where all their real force and capacity for annoyance was acquired. This would, indeed be a fraudulent neutrality, disgraceful to our own Government, and of which no nation would be the dupe. It is impossible for a moment to disguise the facts that the arms and ammunition taken on board the Irresistible at Baltimore were taken for the purpose of being used on a cruize, and that the men there enlisted, though engaged in form as for a commercial voyage, were not so engaged in fact. There was no commercial voyage, and no individual of the crew could believe there was one. Although there might be no express stipulation to serve on board the Irresistible after her reaching the La Plata and obtaining a commission it must be completely understood that such was to be the fact. For what other purpose could they have undertaken this voyage ? Everything they saw, everything that was done, spoke a language too plain to be misunderstood.

* * * * * *

"It is, therefore, very clear that the Irresistible was armed and manned in Baltimore, in violation of the laws and of the neutral obligations of the United States. We do not think that any circumstances took place in the river La Plata, by force of which this taint was removed."

The principle recognized by France, Great Britain, Spain, Portugal, and the United States.

The course of the French Government during the insurrection in the case of the Rappahannock, already referred to, practically asserted the power of the neutral to protect its violated sovereignty, even against a commissioned vessel of war. The British Government itself recognized this principle when it ordered the Alabama to be seized at Nassau, and when it found fault with the Governor of the Cape of Good Hope for not detaining the Tuscaloosa at Cape Town. The principle for which the United States contend has therefore been recognized by Great Britain, Spain, Portugal, France, and the United States.

Deposit of the offence.

It is not deemed necessary to add to the forcible views of Chief Justice Marshall in the case of the Gran Para, as to the deposit of the offence of the cruiser. The United States only ask that the same just rules which they, through their highest judicial officer and most eminent jurist, have established for offences committed on their own soil, may be applied to the offences against British neutrality from which they have suffered. The Alabama, the Georgia, the Florida, the Shenandoah, and the other insurgent vessels of war made no cruise that was not planned on British soil. Their

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respective cruises were to last till the independence of the Confederacy should be established. The career of the Florida terminated at Bahia—that of the Alabama off Cherbourg. The Shenandoah and the Georgia came eventually into the possession of the United States. The principal injuries, which will be hereinafter set forth, came from the acts of these vessels. There were, however, other vessels, whose careers and crimes, as well as those of the above-named four, will now be given in detail.

Résumé of principles

Before proceeding to do so, it will be well to note the points which have been thus far made.

The United States trust that they have established to the satisfaction of the Tribunal of Arbitration as against Great Britain—

1. That it is the duty of a neutral to preserve strict and impartial neutrality as to both belligerents during hostilities. (*See the Queen's Proclamation; also extracts from various writers on International Law above cited.*)

2. That this obligation is independent of municipal law. (*See as above.*)

3. That a neutral is bound to enforce its municipal laws and its executive proclamation; and that a belligerent has the right to ask it to do so; and also the right to ask to have the powers conferred upon the neutral by law increased if found insufficient. (*See the precedents in General Washington's administration; Lord Palmerston's speech of July* 23, 1863; *the opinion of the British Attorney-General during the Crimean War; and the United States' Special Law of March* 10, 1838.)

4. That a neutral is bound to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a Power with which it is at peace. (*See 1st Rule of the Treaty; also the Foreign Enlistment Acts of* 1819 *and* 1870; *also the precedents in General Washington's administration; also the writers on International Law who have been cited.*)

5. That a neutral is bound to use like diligence to prevent the construction of such a vessel. (*See Foreign Enlistment Act of* 1870; *also the action of the United States Government in* 1869; *also the writers on International Law above cited.*)

6. That a neutral is bound to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war against any Power with which it is at peace; such vessel having been specially adapted, in whole or in part, within its jurisdiction, to warlike use. (*See 1st Rule of the Treaty; also the Foreign Enlistment Act of* 1870.)

7. That a neutral may not permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other. (*See 2nd Rule of the Treaty, the Foreign Enlistment Act of* 1870, *and the writers on International Law above cited; also the instructions to the British naval force during the Southern insurrection.*)

8. That a neutral is bound to use due diligence in its ports or waters, to prevent either belligerent from obtaining there a renewal or augmentation of military supplies, or arms for belligerent vessels, or the recruitment of men. (*See 2nd Rule of the Treaty; also the precedents of General Washington's administration; also the Foreign Enlistment Acts of* 1819 *and* 1870; *also the Queen's Proclamation.*)

9. That when a neutral fails to use all the means in its power to prevent a breach of the neutrality of its soil or waters, in any of the foregoing respects, the neutral should make compensation for the injury resulting therefrom. (*See precedents of General Washington's administration between Great Britain and the United States; Treaty of* 1794 *between Great Britain and the United States; Treaty of* 1819 *between the United States and Spain; correspondence between Portugal and the United States,* 1817-22, *and Articles VII and X of the Treaty of Washington.*)

10. That this obligation is not discharged or arrested by the change of the offending vessel into a public man-of-war. (*See the cases of the Santisima Trinidad and the Gran Para, above cited.*)

11. That this obligation is not discharged by a fraudulent attempt of the offending vessel to evade the provisions of a local municipal law. (*See the Gran Para, as above; also Bluntschli and other writers on International Law.*)

12. That the offence will not be deposited so as to release the liability of the neutral even by the entry of the offending vessel in a port of the belligerent, and there becoming a man-of-war, if any part of the original fraud continues to hang about the vessel. (*See the Gran Para, as above.*)

PART IV.

Wherein Great Britain failed to perform its Duties as a Neutral.

Admissions of British Cabinet Ministers.

WHEREIN GREAT BRITAIN FAILED TO PERFORM ITS DUTIES AS A NEUTRAL.

"There is no doubt that Jefferson Davis and other leaders of the South have made an army; they are making, it appears, a navy."—*Speech of Mr. Gladstone, Chancellor of the Exchequer, October* 7, 1862.

"It has been usual for a Power carrying on war upon the seas to possess ports of its own in which vessels are built, equipped, and fitted, and from which they issue, to which they bring their prizes, and in which those prizes when brought before a Court are either condemned or restored. But it so happens that in this conflict the Confederate States have no ports except those of the Mersey and the Clyde, from which they fit out ships to cruise against the Federals; and having no ports to which to bring their prizes, they are obliged to burn them on the high seas.' —*Speech of Earl Russell, Principal Secretary of State for Foreign Affairs, April* 26, 1864.

"Her Britannic Majesty has authorized Her High Commissioners and Plenipotentiaries to express in a friendly spirit the regret felt by Her Majesty's Government for the escape, under whatever circumstances, of the Alabama and other vessels from British ports, and for the depredations committed by those vessels."—*Treaty of Washington, Article I.*

THE extracts which are placed at the head of this division of the Case of the United States are at once evidence of the facts which will now be set forth, and a condensation of the line of argument which those facts logically suggest. The United States summon no less illustrious a person than the present Prime Minister of England to prove not only that the insurgents were engaged in the year 1862 in making a navy, but that the fact was known to the gentlemen who then constituted Her Majesty's Government. They place on the stand as their next witness Her Majesty's Principal Secretary of State for Foreign Affairs during the whole period the rebellion, to prove where the insurgents were constructing that navy, and why they were constructing it in the Mersey and the Clyde; and further, to prove that these facts, also, were known at the time to the gentlemen who then constituted Her Majesty's Government. And lastly, they lay before the Tribunal of Arbitration the graceful and kindly testimony of the regret of Her Majesty's Government that the escape* of the cruisers, which were built in Great Britain, with the knowledge of the Government, and which constiuted that navy, should have resulted in the subsequent destruction of the property of citizens of the United States.

In discussing this question, except so far as may be absolutely necessary for the protection of the interests which they are bound to guard, the United States will not attempt to disinter from the grave of the past the unhappy passions and prejudices, and to revive the memory of the injuries, often great and sometimes petty, which caused such poignant regret, such wide-spread irritation, and such deep-seated sense of wrong in the United States. Over much of this feeling the kindly expression of regret in the Treaty of Washington has for ever cast the mantle of oblivion.

The reports of the Diplomatic and Consular Officers of the United States, made from the British dominions to their Government during the war, which are printed in the volumes which will accompany this case, are full of proof of a constant state of irritating hostility to the United States, and of friendship to the insurgents, in the several communities from which they are written. These despatches are interesting, as showing the facilities which the complicity of the community often, if not always, gave

* "I wish the word 'escape' had not been found in the apology, as it is termed in describing the exit from our ports of the Alabama and other ships of that kind. I cannot help thinking that was an unguarded expression, which may effect the course of the future arbitration. I can easily imagine that in some minds the word 'escape' would be construed unfavourably to this country, for it means that something has got away which might have been retained. We speak of the escape of a prisoner: and the meaning of the term is that there was power to prevent the escape, and that the escape happened in spite of it"—*Lord Cairns'* (*ex-Chancellor*) *Speech in the House of Lords, June* 12, 1871. *See London Times, June* 13, 1871.

to the schemes of the insurgents for violating the Sovereignty of Great Britain. The reports from Liverpool, Nassau, Bermuda, and Melbourne are especially interesting in this respect, and tend to throw much light on the causes of the differences which are, it is to be hoped, to be for ever set at rest by the decision of this Tribunal.

Wherein Great Britain failed to perform its Duties as a Neutral.

As soon as the authorities who were directing at Richmond the fortunes of the insurgents were sure that their right to carry on a maritime war would be recognized by Great Britain, their Secretary of the Navy recommended to Mr. Jefferson Davis to send an agent to Great Britain for the purpose of contracting for and superintending the construction of men-of-war; and Mr. James Dunwoody Bullock, who had been an officer in the navy of the United States, was, in accordance with that recommendation, sent there in the summer of 1861, and entered upon his duties before the autumn of that year. Mr. North, also formerly of the United States navy, was empowered "to purchase vessels"* for the insurgents; and Mr. Caleb Huse, formerly of the Ordnance Department of the Army of the United States, was sent to London for "the purchase of arms and munitions of war."* Mr. Bullock, Mr. North, and Mr. Huse continued to discharge their duties during most of the struggle, and served the purposes of those who sent them there, with intelligence and activity.

British ports the base of insurgent operations; a partial hospitality shown to the insurgents; a branch of their Government established in Liverpool; their Government vessels officially aided in evading the blockade and in furnishing them with arms, munitions, and means for carrying on the struggle.

The means for carrying on these extensive operations were to be derived from the proceeds of the cotton crop of the South. It will probably be within the personal recollection of the several gentlemen, members of the Tribunal, that in the year 1860 the world was dependent upon the fields of the insurgent States for a large portion of its supply of cotton, and that, when the blockade was established by the United States, a large part of the crop of 1860 was still unexported.† This, and all subsequent crops that might be produced during the struggle, would yield their value in gold as soon as landed in Liverpool.

The insurgent agents took advantage of this fact. They secured, through their assumed authority as a Government, the control of so much as might be necessary for their purposes, and they early made arrangements for a credit in Liverpool upon the faith of it.

The firm of Fraser, Trenholm, and Co.

It so happened that there was at Charleston at that time, a well-established commercial house, doing business under the name of John Fraser and Co. The head of this firm was George A. Trenholm, of Charleston. Another prominent member was Charles K. Prioleau, also a citizen of the United States. Before or about the time the insurrection broke out, and, as the United States believe, in anticipation of it, this house established a branch in Liverpool, under the name of Fraser, Trenholm, and Co. Prioleau was dispatched thither to take charge of the Liverpool business, and became, for purposes that may easily be imagined, a naturalized British subject. George A. Trenholm remained in Charleston, and, in due course of time, became the Secretary of the insurgent Treasury, and a member of the so-called Government at Richmond. An arrangement was made by which the cotton of the insurgent authorities was to be sent to Fraser, Trenholm, and Co., to be drawn against by the purchasing agents of the insurgents.‡

The first amount (500,000 dollars) was placed to their credit in Liverpool, somewhere about the month of May, or early in June, 1861; and, under the name of "depositories," Fraser, Trenholm, and Co. remained a branch of the Treasury of the insurgent Government.

Thus there was early established in Great Britain a branch of the War Department of the insurgents, a branch of their Navy Department, and a branch of their Treasury, each with almost plenary powers. These things were done openly and notoriously. The persons and places of business of these several agents were well known to the communities in which they lived, and must have been familiar to the British officials. If there was any pretence of concealment in the outset, it was soon abandoned.

* Walker to Green, 1st July, 1st July, 1861, Vol. VI, page 30.

† "It was estimated that only about 750,000 bales at most of the crop of 1860 remained on hand in the South when the blockade began. The crop of 1861 was about 2,750,000 bales—a little more than half the total quantity consumed in 1860—and this supply, or so much of it as could be properly picked, cleaned, and baled, would, together with what remained from the previous year, have been available for exportation in the winter and spring of 1861-62. The quantity actually sent abroad, however, up to July or August, 1862, was reckoned not to exceed 50,000 bales, the great bulk of which, but not the whole, went to England."—*Bernard's Neutrality of Great Britain, page* 286.

‡ "Of twenty steamers, which were said to have been kept plying in 1863 between Nassau and two of the blockaded ports, seven belonged to a mercantile firm at Charleston, who had a branch house at Liverpool, and through whom the Confederate Government transacted its business in England." "The name of the Charleston firm was John Fraser and Co.; that of the Liverpool house, Fraser, Trenholm, and Co. Of the five members of the house, four, I believe, were South Carolinians, and one a British subject."—*Bernard's Neutrality of Great Britain, page* 289 *and note.* The British subject referred to by Mr. Bernard was Prioleau, naturalized for the purpose.

Wherein Great Britain failed to perform its Duties as a Neutral.

The firm of Fraser, Trenholm, and Co.

On the 22nd of July, 1861, Huse writes to the officer in charge of the insurgent Ordnance Department, complaining of the activity of the agents of the United States in watching and thwarting his movements. "It is difficult," he says, "for a stranger to keep his actions secret when spies are on his path." He says that he shall have ready, by the 1st of August, some of the goods that had been ordered on the 17th of the previous April, and more by the 1st of October, and that "the shipping of the articles will be left in the hands of the Navy Department."*

On the 18th September, the steamer Bermuda ran the blockade, and arrived at Savannah with "arms and munitions on board."† She came from Fraser, Trenholm, and Co., consigned to John Fraser and Co. Information of the character and purposes of this steamer, and of the nature of her freight had been given to Lord Russell by Mr. Adams on the 15th of the previous August,‡ and he had declined to "interfere with the clearance or sailing of the vessel."§ On the fourth day after her arrival at Savannah, her consignees offered to charter her to the insurgents, and the offer was accepted."‖

The experience of the Bermuda, or the difficulties which she encountered in running the blockade, seem to have induced the insurgent authorities to think that it would be well, to have some surer way for receiving the purchases made by their agents in Liverpool. The stringency of the blockade established by the United States, and the nature of the coast that was blockaded, made it necessary to have a set of agents in the West Indies also.

Character of the blockaded coast.

The coast of the United States, from Chesapeake Bay to the Mexican frontier, is low, with shoaly water extending out for some distance to sea. A range of islands lies off the coast, from Florida to Charleston, and islands also lie off Wilmington and the coast to the north of it. The waters within these islands are shallow, affording an inland navigation for vessels of light draught. The passages to the sea between the islands are generally of the same character. This outlying frontier of islands, or of shallow waters, is broken at Wilmington, at Charleston, and at Savannah. At these three points large steamers can approach and leave the coast; but these points were at that time guarded by the blockading vessels of the United States, so as to make the approach difficult. Vessels not of light draught and great speed were almost certain of capture; while vessels of such draught and speed could not carry both coal and a cargo across the Atlantic.

To avoid this risk it was resolved to send the purchases which might be made in England to Nassau in British bottoms, and there tranship them into steamers of light draught and great speed, to be constructed for the purpose,¶ which could carry coal enough for the short passage into the waters that connected with either Charleston, Savannah, or Wilmington. The first order from Richmond that is known to have been given for such a shipment is dated the 22nd of July, 1861.**

Geographical situation of Nassau and Bermuda.

The attention of the Tribunal of Arbitration is invited to the accompanying map, showing how admirably the British ports of Nassau and Bermuda were adapted for the illegal purposes for which it was proposed to use them. Nassau was surrounded by a cluster of British islands, so that even a slow-sailing blockade-runner, pressed by a pursuing man-of-war, could in a short time reach the protection of British waters. Bermuda had the advantage of being more directly off the ports of Wilmington and Charleston. Neither Nassau nor Bermuda, however, was more than two days distant from the blockaded ports for the swift steamers that were employed in the service.††

On the 4th of October, 1861, Mr. Benjamin, writing from Richmond, and signing himself as "Acting Secretary of War," addressed Mr. Mallory as "Secretary of the Navy," and asked if he could "spare an officer from his department to proceed to Havana, and take charge of funds there, to be used by agents of this department in the purchase of small-arms and ammunition."‡‡

* Huse to Gorgas, Vol. VI, page 33.
† Lawton to Cooper, 20th September, 1861, Vol. VI, page 36.
‡ Adams to Russell, Vol. I, page 760.
§ Russell to Adams, Vol. I, page 762.
‖ Benjamin to John Fraser and Co., 27th September, 1861, Vol. VI, page 37.
¶ Huse to Gorgas, 15th March, 1862, Vol. VI, page 69.
** Walker to Huse and Anderson, Vol. VI, page 31.
†† "The British Island of New Providence, in the Bahamas, became the favourite resort of ships employed in these enterprises. Situated in close neighbourhood to the coast of Florida, and within three days' sail of Charleston, it offered singular facilities to the blockade-runners. The harbour of Nassau, usually quiet and almost empty, was soon thronged with shipping of all kinds; and its wharves and warehouses became an entrepôt for cargoes brought thither from different quarters. Agents of the Confederate Government resided there, and were busily employed in assisting and developing the traffic."—*Bernard's Neutrality of Great Britain, page* 299.
‡‡ Benjamin to Mallory, Vol. VI, page 39.

THE
S.E. COAST
of the
UNITED STATES
and its relation
to the
BRITISH WEST INDIA COLONIES.
UNITED STATES
BAHAMA ISLANDS
CUBA
HAITI
MEXICO
GUATEMALA
HONDURAS
NICARAGUA
CARIBBEE ISLANDS
Bermuda
Barbados
Antigua
Montserrat
Dominica
Martinique
St Lucia
St Vincent
Grenadines
Trinidad
Tobago
Jamaica
Porto Rico
Virgin Is
Anegada
Anguilla
St Thomas
Santa Cruz
Tortola
Turks I
Caicos Is
Mariguana
Inagua
Exuma
Abaco
Bimini
Cat I
Andros I
Providence
Long I
Crooked I
Acklins I
Matthew Town
Windward Channel
Mouchoir Passage
Caicos Passage
Old Bahama Channel
Yucatan Channel
Gulf of Florida
Gulf of Mexico
Tortugas
Key West
Havana
Matanzas
Cape St Antonio
Isle of Pines
Cape Cruz
Nipe
Santiago
Jamaica
Kingston
Port Royal
Morant Point
Navassa
Tiburon
Cape Tiburon
Cape Dame Marie
Gonaives
Port au Prince
Cape Nicholas
Mole St Nicholas
Cape Maysi
Cape Haytien
Cape Samana
Cape Engano
Mona Passage
Virgin Passage
Anegada Passage
Sombrero
Guadaloupe
Dominica
Martinique
St Lucia
St Vincent
Grenadines
Barbadoes
Tobago
Trinidad
Margarita
Cumana
Cape Paria
Gulf of Paria
Orinoco
Cape Codera
La Guayra
Puerto Cabello
Coro
Maracaibo
Gulf of Venezuela
Cape Chichibacoa
Cape de la Vela
Rio de la Hacha
Santa Martha
Cartagena
NEW GRANADA
VENEZUELA
Truxillo
Omoa
Gulf of Honduras
Cape Gracias a Dios
Blewfields
Rio San Juan
Port Royal
Isthmus of Darien
Gulf of Darien
Chagres
Porto Bello
Panama
Gulf of Panama
Point Burica
Cape Corrientes
Cape Catoche
Campeachy
Bay of Campeachy
Laguna de Terminos
Tabasco
Vera Cruz
Tuxpan
Tampico
Rio Grande
Matagorda B.
Galveston B.
Sabine Pass
Calcasieu
Mississippi R.
Mississippi S.
Lake Pontchartrain
New Orleans
Mobile
Mobile Pt
Dauphine I.
Pensacola
Perdido
Appalachicola
St Marks
St Augustine
Cape Florida
Key Biscayne
Matanzas Inlet
Cape Canaveral
Mosquito Inlet
St Johns R.
Charleston
Port Royal
Savannah
Tybee
Sapelo
St Simons
Cumberland I.
Cape Fear
Cape Hatteras
Ocracoke
Pamlico Sound
Albemarle Sound
Roanoke I.
Currituck
Chesapeake
Norfolk
Hampton Roads
Cape Henry
Delaware Bay
Cape May
Cape Henlopen
Philadelphia
Trenton
New York
Sandy Hook
Long Island
Block Island
Rhode Island
Newport
Boston
Cape Cod
Cape Ann
Portland
Penobscot
Passamaquoddy
Nova Scotia
Halifax
Cape Sable
St Johns
Cape Race
Cape Breton
Gulf of St Lawrence
Anticosti
Labrador
Hudson's Bay
Hudson's Straits
Cape Farewell
Greenland
Iceland
Cape Clear
Ireland
Scilly Is
Land's End
Bristol Channel
Cape Finisterre
Lisbon
Cape St Vincent
Gibraltar
Cape Spartel
Tangier
Mediterranean Sea
Cape Bon
Malta
Sicily
Cape Passaro
Messina
Naples
Gulf of Genoa
Leghorn
Corsica
Sardinia
Cape Carbonara
Gulf of Lyons
Marseilles
Toulon
Nice
Genoa
Venice
Gulf of Venice
Trieste
Fiume
Ragusa
Cape Otranto
Gulf of Lepanto
Zante
Cape Matapan
Candia
Cape Spada
Cape Salmone
Cyprus
Rhodes
Smyrna
Gulf of Smyrna
Scio
Mytilene
Gallipoli
Sea of Marmora
Constantinople
Black Sea
Sea of Azoff
Crimea
Sebastopol
Odessa
Danube R.
Wallachia
Moldavia
Bessarabia
Turkey
Greece
Morea
Gulf of Corinth
Athens
Negropont
Gulf of Volo
Salonica
Gulf of Contessa
Mount Athos
Gulf of Salonica
Thessaly
Albania
Epirus
Ionian Islands
Cephalonia
Ithaca
Zante
Cerigo
Candia
Rhodes
Cyprus
Note.
The shaded parts are British possessions

Wherein Great Britain failed to perform its Duties as a Neutral.

— Geographical situation of Nassau and Bermuda.

Mr. Lewis Heyliger, of New Orleans, was apparently designated for this purpose. On the 30th of November, 1861, he takes a letter from Mr. Benjamin to Mr. Helm, the agent of the insurgents at Cardenas, in Cuba, saying that he is "an active and accomplished business man;" that he is to aid Helm, "whether in the disposal of the cotton or the arrangements for the shipments;" and that "the articles first in importance, and to be sent in preference to everything else, are small-arms and *cannon* powder."*

Heyliger went to Cuba, and in a few days after was transferred to Nassau to take charge of "the British steamer Gladiator, Commander G. G. Bird, with a cargo for the Confederate States."† He remained there as the agent, treasury depositary, and representative of the insurgents during the rebellion.

What was done at Nassau.

The Gladiator was a steamer bought and fitted out in England under an agreement made at London, October 24, 1861, between Mr. T. O. Stock, a subject of Her Majesty, and Mr. Caleb Huse.‡ The evident object of this agreement was to enable her to sail under the British flag, although owned by the insurgents. She was to take out five hundred tons of goods, and was "to proceed to a port in the Confederate States or an intermediate port." No concealment of her object or destination was made in England.§ She arrived at Nassau from London on the 9th of December, 1861.‖

The day after she arrived there a United States' vessel of war came into the port. Heyliger, finding that this vessel would not leave, and that therefore the Gladiator, which was slower than the man-of-war, could not leave with safety, represented to the British authorities that such a course "would tend to cut off the trade" which the insurgents desired to divert to Nassau, and that he thought "some steps should be adopted to remind him (the commander) that he is infringing on the laws of hospitality." He reported this to Richmond and added, "I have reason to know that these arguments have not been without their effect, inasmuch as the matter was incidentally discussed at a meeting of the Council the other day; and I really believe that in the course of a week or two some action will be taken to impress the captain of the enemy's vessel with the conviction that his absence will be preferable to his company." "We have succeeded," he continued, "in obtaining a very important modification of the existing laws, viz: *the privilege of breaking bulk and transhipment.*"¶ That modification was all that the insurgents wanted. That privilege converted the port of Nassau into an insurgent port, which could not be blockaded by the naval forces of the United States. Further stay of the United States' vessels of war was therefore useless. The United States ask the Tribunal to find that this act, being a permission from the British authorities at Nassau, enabling a vessel chartered by the insurgents, and freighted with articles contraband of war, to diverge from its voyage, and to tranship its cargo in a British port, when not made necessary by distress, was a violation of the duties of a neutral.

On the 27th of January, 1862, Maffitt, an officer in the service of the insurgents, (the same who afterward commanded the Florida,) was sent to take command of the Gladiator as an insurgent vessel** (although under British colours), and on the 30th of January, 1862, a portion of the Gladiator's valuable cargo was transhipped to the Kate, a small steamer sailing under British colours, and eventually all went in the same way. In the despatch announcing the transfer to the Kate, Heyliger said: "You may readily imagine how intensely disgusted the Yankees are at this partiality, as they style it. It is called another flagrant violation of neutral rights. * * My relations with the authorities here are of the most friendly character. I receive many marked attentions, which I value as going to show the increased cordiality of feeling toward the Confederate Government."††

The United States are not able to say what "effect" the colonial authorities of Nassau induced Heyliger to think would come from his "arguments." They point out, however, to the Tribunal of Arbitration the fact, that in about one month after that time, viz., on the 31st day of January, 1862, Earl Russell informed the Lords Commissioners of the Admiralty that "during the continuance of the present hostilities * * * * no ship of war or privateer belonging to either of the belligerents shall be permitted to enter or remain in the port of Nassau, or in any other port, roadstead, or

* Benjamin to Helm, Vol. VI, page 43.
† Helm to Heyliger, 20th December, 1861, Vol. VI, page 51.
‡ See the agreement, Vol. VI, page 42.
§ Adams to Seward, Vol. I, page 769.
‖ Whiting to Seward, 10th December, 1861, Vol. VI, page 44.
¶ Heyliger to Benjamin, 27th December, 1861, Vol. VI, page 55.
** Benjamin to Maffitt, 27th January, 1862, Vol. VI, page 57.
†† Heyliger to Benjamin, 30th January, 1862, Vol. VI, page 58.

Wherein Great Britain failed to perform its Duties as a Neutral.

What was done at Nassau.

waters of the Bahama Islands, except by special leave of the Lieutenant-Governor of the Bahama Islands, or in case of stress of weather."*

An order more unfriendly to the United States, more directly in the interest of the insurgents, could not have been made, even if founded upon Heyliger's friendly intimations to the Colonial authorities. Under the construction practically put upon it, the vessels of war of the United States were excluded from this harbour for any purpose, while it was open for free ingress and egress to vessels of the insurgents, purchased, or built, and owned by the authorities at Richmond, bringing their cotton to be transhipped in British bottoms to Fraser, Trenholm, and Co., in Liverpool, and taking on board the cargoes of arms and munitions of war which have been dispatched thither from Liverpool. The Tribunal of Arbitration will not fail to observe that this was no British commerce which had existed before the war, and which the neutral might claim the right to continue. It was to a large extent the commerce of the authorities at Richmond—carried on in their own vessels, and for their own benefit—and consisted of the export of cotton from the South on account of the so-called Government, and the return of arms, munitions of war, and quartermaster stores from Great Britain, for the purpose of destroying the United States—a nation with which Great Britain was at peace. The United States confidently insist that Great Britain, by shielding and encouraging such a commerce, violated its duties as a neutral toward the United States.

The United States denied permission to deposit coal at Nassau.

It is a most unpleasant duty of the United States to call the attention of the Tribunal of Arbitration to the fact that, at the very time of this affair of the Gladiator, another matter was going on in the same port, which furnished a commentary on the ideas of neutrality entertained by the Colonial Authorities.

The day after the arrival of that vessel, the United States' Consul at Nassau wrote to his Government thus: "The coal which is being landed here for Government has caused great excitement among the Nassau masses, and a deputation visited Governor Nesbitt yesterday to remonstrate against its being landed."† The remonstrances were successful. On the same day the Colonial Secretary wrote to the Consul that the coal could be admitted only "on the express condition and understanding that such coal should not afterward be re-shipped or otherwise used in any manner which may, in the opinion of the law authorities of the Colony, involve a breach of Her Majesty's Proclamation of the 13th of May last, *and particularly that such coal shall not be used for the purpose of coaling, or affording facilities for coaling, at this port, the vessels of war of the United States' Navy, during the continuance of the hostilities.*"‡

The sincerity of the desire of the Colonial Authorities to obey Her Majesty's Proclamation may be estimated from the following facts: 1. That that Proclamation inhibited Her Majesty's subjects from "breaking, or endeavouring to break, any blockade lawfully or actually established by or on behalf of either of the said contending parties;"§ yet the Colonial authorities finding that the Gladiator, which had been chartered to break a blockade established by the United States, would probably be intercepted by the vessels of the United States, permitted the cargo to be transhipped into smaller steamers, with the avowed purpose of breaking that blockade; 2. That Her Majesty's Proclamation also inhibited British subjects from "carrying military stores or materials, or any article or articles considered and deemed to be contraband of war, according to the law or modern usage of nations, for the use or service of either of the said contending parties;" yet the Colonial authorities welcomed the Gladiator, sailing under the British flag, with contraband of war in violation of the Proclamation, and permitted her to shift her illegal cargo into other vessels, in like manner using the British flag for the purpose of transporting it to and on account of a belligerent; 3. That Her Majesty's Proclamation made no mention of coal, and that coal is not regarded by Her Majesty's Government as an article necessarily contraband of war;‖ yet the Government of the United States was forbidden by the same authorities, in the same week, to deposit its coal at Nassau, except upon the condition that it would not use it.

The United States have no reason to suppose that either of these partial decisions met with the disapproval of Her Majesty's Government.

Complaints to Earl Russell and his reply.

On the contrary, Earl Russell, on the 8th of January, 1862, in reply to a complaint from Mr. Adams that the port of Nassau was used as a depôt of supplies by the insurgents, officially informed that gentleman that he had received "a report from the Receiver-General of the port of Nassau, *stating that no warlike stores have been received at*

* Vol. IV, page 175.
† Whiting to Seward, Vol. VI, page 44; Vol. I, page 636.
‡ Thompson to Whiting, Vol. VI, page 45.
§ Vol. I, page 44.
‖ Lord Granville to Count Bernstorff, 15th September, 1870.

that port, either from Great Britain or elsewhere, and that no munitions of war have been shipped from thence to the Confederate States.* The United States with confidence assert, in view of what has been already shown, that, had Earl Russell seriously inquired into the complaints of Mr. Adams, a state of facts would have been disclosed entirely at variance with this report—one which should have impelled Her Majesty's Government to suppress what was going on at Nassau. The foregoing facts were all within the reach of Her Majesty's Government, although at that time not within the reach of the Government of the United States. The failure to discover them, after Mr. Adams had called attention to them, was a neglect of the diligence in the preservation of its neutrality, which was "due" from Great Britain to the United States; and it taints all the subsequent conduct of Great Britain toward the United States during the struggle.

Wherein Great Britain failed to perform its Duties as a Neutral.

Complaints to Earl Russell and his reply.

On the 31st day of the same month, instructions issued from the Foreign Office, prescribing the amount of hospitalities to be extended to the belligerents.

These instructions have already been referred to. They provided that: 1. No ship of war or privateer of either belligerent was to be permitted to enter any port, roadstead, or water in the Bahamas except by special leave of the Lieutenant-Governor, or in case of stress of weather; and in case such permission should be given, the vessel was nevertheless to be required to go to sea as soon as possible, and with no supplies except such as might be necessary for immediate use. 2. No ship of war or privateer of either belligerent was to be permitted to use British ports or waters as a station or place of resort for any warlike purpose, or for the purpose of obtaining any facilities of warlike equipment. 3. Such ships or privateers entering British waters were to be required to depart within twenty-four hours after entrance, except in case of stress of weather, or requiring provisions or things for the crew or repairs; in which cases they were to go to sea as soon as possible after the expiration of the twenty-four hours, taking only the supplies necessary for immediate use; they were not to remain in port more than twenty-four hours after the completion of necessary repairs. 4. Supplies to such ships or privateers were to be limited to what might be necessary for the subsistence of the crew, and to enough coal to take the vessel to the nearest port of its own country, or to some nearer destination; and a vessel that had been supplied with coal in British waters, could not be again suplied with it within British jurisdiction, until after the expiration of three months from the date of the last supply taken from a British port.†

Instructions as to hospitalities to the belligerents.

Almost simultaneously with the announcement by Earl Russell of an imaginary condition of affairs at Nassau, Lord Palmerston stated to Mr. Adams, that "it would not do for the United States' ships of war to harass British commerce on the high seas, under pretence of preventing the Confederates from receiving things that are contraband of war."‡ Thus, Great Britain, in the month of January 1862, through Earl Russell and Lord Palmerston, and the instructions to the Admiralty, excluding United States' vessels of war from the port of Nassau, except by permission of the Governor, virtually said to the United States: "You complain that the insurgents make illegal use of Nassau, to your injury, in violation of the Queen's Proclamation, and of our duties as a neutral. We deny the fact; at the same time we exclude your vessels from that port, the place where you can best establish the truth of your allegations; and we warn you not to attempt to prove them by examining too closely, on the high seas, the vessels which sail under the British flag.

Lord Palmerston's threats.

Having now shown how the operations of the insurgents began at Nassau, and how they were facilitated by the co-operation and complicity of the local authorities, it will not be necessary to trespass on the patience of the Tribunal of Arbitration by a similarly minute examination of the doings at that port for the rest of the year 1862. Other vessels, freighted with contraband of war, followed the Gladiator. The Economist and the Southwick came closely upon her track, and Heyliger was directed to do with their cargoes as he had done with the Gladiator's.§ Huse was also instructed to continue his purchases, and to send to the West India Islands, where the steamers could break bulk.‖ Huse called the attention of his principals to the efficiency of the blockade; said that the vessels which brought the cargoes across the Atlantic could not enter the blockaded ports; urged them to continue the system of transhipment; and complained of the activity of the United States' officials.¶ It was considered important to have a

* Russell to Adams, Vol. VI, page 57.
† Vol. IV, page 175.
‡ Earl Russell to Lord Lyons, Vol. II, page 591.
§ Benjamin to Heyliger, 22nd March, 1862, Vol. VI, page 71.
‖ Benjamin to Huse, 10th March, 1862, Vol. VI, page 68.
¶ Huse to Gorgas, 15th March, 1862, Vol. VI, page 69.

Wherein Great Britain failed to perform its Duties as a Neutral.

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Lord Palmerston's threats.

naval officer in charge of the transhipments, and Maffitt was detailed for the purpose.* He arrived there on or about the 21st of May, and reported that he had assumed command of the Manassas [Florida]; which had arrived there from Liverpool on the 28th day of April; said that his "ambition was great;" and promised to give "annoyance to the enemy."† In May the supply of coal for the insurgent vessels fell short, and Heyliger went to Bermuda to buy some.‡ The steps taken about this time for the detention of the Florida will be alluded to later.

Contraband of war fraudulently cleared at Nassau for British ports.

The cargoes of contraband of war that were thus transhipped were entered on the manifests as for St. John's, New Brunswick. It could not but have been well known at the Custom-house that this was a fraud; yet the Customs authorities winked at the fraud, and gave the vessels clearances as British vessels sailing for British ports.§

Heyliger continued to report the transhipment and forwarding of these arms and military supplies. He noticed the arrival and departure of the "Kate," and other vessels, on account of the insurgent authorities, and on the 26th of July, 1862, he reported that the "Steamer Scotia, a private venture,"‖ was about to leave with a large supply of rifles, powder, and other ammunition. He did not report any other "private venture," so far as known to the United States.

Résumé for the year 1862.

The operations of Huse during this year, and his shipments through Heyliger, are detailed as follows in a letter from Colonel Gorgas, insurgent Chief of Ordnance, to the insurgent Secretary of War, dated December 3, 1862.¶ "The purchase of ordnance and ordnance stores in foreign markets on Government account are made by Major Caleb Huse, C. S. Artillery, who resides in London, and whose address is No. 38, Clarendon Road, Notting Hill, London, West. Major Huse was detailed for this duty in April, 1861. * * * He has purchased arms to the amount of 157,000 [stands ?] and large quantities of gunpowder, some artillery, infantry equipments, harness, swords, percussion caps, saltpetre, lead, &c. In addition to ordnance stores, using a rare forecast, he has purchased and shipped large supplies of clothing, blankets, cloth, and shoes for the quartermaster's department, without specific orders to do so. * * To pay for these purchases, funds have been from time to time sent him by the Treasury Department, on requisition from the War Department, amounting in the aggregate to $3,095,139 18. These have been wholly inadequate to his wants, and have fallen far short of our requisitions. He was consequently in debt at latest advices to the amount of 444,850*l.*, a sum equivalent, when the value of exchange is considered, to $5,925,402 of our currency. * * An agent, Mr. Norman S. Walker, was lately dispatched with $2,000,000 in bonds of the Confederate States. The instructions to Mr. Walker direct him to return to Bermuda, after the disposition of the bonds in England, and after conference with Major Huse. He is to remain there as a resident disbursing agent, and is, in conjunction with Mr. S. G. Porter, charged with the transfers of the cargo of the Harriet Pinkney, now there, and other ships hereafter to arrive, to the ports of the Confederate States. * * * A large part of the cargoes have been landed at Nassau, and thence transmitted to the ports of the Confederate States in fast steamers. Their destination has lately been changed to Bermuda, where several most valuable cargoes are now awaiting transportation. It appears to me to be the appropriate duty of the Navy Department to assist in the running in of these cargoes; but if the burden of it is to be borne entirely by the War Department, it is highly important that light-draught steamers should be purchased, and used solely for the transportation of cargoes from Bermuda."

Base changed to Bermuda.

This change to Bermuda had been recommended by Huse in the previous August.** The reason given was that "the port of Nassau had become dangerous; and he had appointed as agent there "Mr. S. G. Porter, a gentleman highly recommended by Commander J. D. Bullock." Gorgas inquired of the insurgent Secretary of War whether Huse's appointment of Porter should be approved,†† and the reply is to be found in the above extract. Walker went there before January 1, 1863,‡‡ and on the 9th day of February, 1863, it was reported that Bermuda was a good depôt for the purpose, and that the insurgent authorities "had then three steamers running there."§§

* Randolph to Heyliger, 11th April, 1862, Vol. VI, page 72.
† Maffitt to Randolph, 21st May, 1862, Vol. VI, page 83.
‡ Heyliger to Randolph, 28th June, 1862, Vol. VI, page 87.
§ Hawley to Seward, 27th June, 1863, Vol. VI, page 127.
‖ Heyliger to Randolph, Vol. VI, page 92.
¶ Gorgas to Seddon, Vol. VI, page 104.
** Huse to Gorgas, 4th August, 1862, Vol. VI, page 93.
†† Gorgas to Randolph, 1st November, 1862, Vol. VI, page 103.
‡‡ Gorgas to Huse, 1st January, 1863, Vol. VI, page 107.
§§ Gorgas to Huse, 9th February, 1863, Vol. VI, page 111.

Wherein Great Britain failed to perform its Duties as a Neutral.

Having thus shown that the branch of the insurgent War Department, established in Great Britain had, during the years 1861 and 1862, purchased arms, ammunition, and supplies to the amount of about nine millions of dollars, and that the branch of their Treasury established at Liverpool, had during the same time paid on account of these purchases over three millions of dollars, and that vessels, either belonging to or chartered by the insurgent authorities were occupied as transports (in violation of the Foreign Enlistment Act of 1819), in carrying this large quantity of war material from British ports to the insurgents, and in bringing back cotton, the property of the insurgent authorities, to be used in making payments therefor, it is now necessary to see what the branch of their Navy Department, under the direction of Bullock, was engaged in during the same period.

Base changed to Bermuda.

The United States are not able to trace these transactions with the minuteness with which they have been able to narrate the doings of Huse and Heyliger. The correspondence of those who assumed to direct the naval affairs of the insurgents has not come into the possession of the United States, as did the confidential correspondence of other agents heretofore cited. Bullock's operations, however, were on so large a scale that it will not be difficult to follow him. In doing this the United States will confine themselves to general statements, reserving the particulars for the remarks that will be made upon the career of each cruiser.

What was done at Liverpool by Bullock.

Bullock, as has been said, established himself in Liverpool in the summer of 1861. The United States' Consul reports him on the 20th September as "residing in private lodgings in Liverpool," and as being "chiefly in communication with Fraser, Trenholm, and Co., whose office he visits daily," Prioleau, one of the firm of Fraser, Trenholm, and Co., says that he occupied for a year after his arrival a room in their office.*

It is probable that, as early as October 1861, he had made the contracts for the two gun-boats which were afterwards known as the Florida and the Alabama. The drawings of the Alabama were signed by the Lairds, who built her, on the 9th of October, 1861. The United States have no means for determining the date when the contract was made with Fawcett, Preston, and Co., for the Florida. Their Consul at Liverpool has stated that, on his arrival at the Consulate in November 1861, his attention was called by the Acting Consul to this vessel, then called the Oreto, and to the Alabama. It is clear, therefore, that the work was advanced at that time.† Prioleau also testifies that he introduced Bullock to Fawcett, Preston, and Co., for the purpose of making the contract for the Florida.‡

The Florida.

By the 4th of February, 1862, the Florida was so nearly completed that the Consul at Liverpool wrote, "She is now taking in her coal, and appearances indicate that she will leave here the latter part of the week without her armament." Her gun-carriages were soon taken on board, in pieces, some in a rough state, and were put in the hold,§ and a day or two later she received her provisions, and the crew was shipped. The steamer Bahama preceded her by a few days with her armament, but reached Nassau after her.

When the Florida sailed she took a crew of fifty-two men and some guns,‖ and was in every respect a man-of-war except that her armament was not in place. It was conclusively shown at Nassau that she might have been fitted for battle in twenty-four hours after leaving the dock in the Mersey.¶

The vessel in that condition was consigned by Bullock to Heyliger.** The connection of Bullock with the vessel from the beginning is established by this act, as well as by the evidence of Prioleau. The connection of Fraser, Trenholm, and Co. is shown by the admission of Prioleau, and by the fact that a member of that firm accompanied her on her trial trip and on her departure.††

Mr. Adams called the attention of Earl Russell to the character and destination of this vessel on the 29th of February, and again on the 25th of March, 1861. Her Majesty's Government had ample time to ascertain her character and to detain her. They did go through the form of an examination which, seen in the light of subsequent events, reads like a farce.‡‡

The Alabama.

The work on the Alabama progressed more slowly than that on the Florida, possibly

* Vol. VI, page 185.
† Dudley to Edwards, Vol. III, page 17.
‡ Dudley to Seward, Vol. VI, page 186.
§ Dudley to Seward, Vol. II, page 593.
‖ Report of Board of Customs, Vol. II, page 605.
¶ Captain Hickley's affidavit, Vol. VI, page 263.
** Heyliger to Randolph, 2nd May, 1862, Vol. VI, page 76.
†† Dudley to Edwards, Vol. III, page 17.
‡‡ Vol. II, pp. 595 and 604.

Wherein Great Britain failed to perform its Duties as a Neutral.

The Alabama.

because it was a larger vessel. She was launched on the 15th of May, and made her trial trip on the 12th of June.* "The money for her was advanced by Fraser, Trenholm, and Co." † Captain Bullock was "all the time in communication with Fawcett, Preston, and Co., who fitted out the Oreto, and with the Lairds, who were fitting out this vessel," and went almost daily on board the gun-boat, and seemed to be recognized as in authority." It was even said in Liverpool that he was to command her.‡ Mr. Adams, on the 23rd of June, invited Earl Russell's attention to this vessel, and an examination was ordered. The examiners reported to the Lords Commissioners of Her Majesty's Treasury that it was "most apparent that she is intended for a ship of war," and that "the description of her in the communication of the United States' Consul is most correct, with the exception that her engines are not constructed on the oscillatory principle." §

The evidence of the criminal character of the vessel became so overwhelming that Her Majesty's Government was at length induced to give an order for her detention. Before the order reached Liverpool she had escaped. She ran down to Moelfra Bay, on the coast of the Isle of Anglesey, and there took on board twenty or thirty men from the tug Hercules, with the knowledge of the British officials at Liverpool. She then sailed to the Azores, where she was met by the Agrippina from London and the Bahama from Liverpool. These vessels brought her officers, her armaments, and her coal. The transhipments were made, and then the British ensign was hauled down, and the insurgent flag hoisted.

It is not deemed necessary to examine further, in this connection, the evidence showing the palpable character of this vessel, especially as Lord Russell, in the course of the discussion which ensued, admitted that "*it is undoubtedly true that the Alabama was partly fitted out in a British port.*" ‖ That evidence will be discussed more at length in its appropriate place. For the present, the United States only aim to satisfy the Tribunal that, flagrant as was the violation of neutrality in the case of the Alabama, it was but a part of the great scheme which was set on foot when Huse, Bullock, and Fraser, Trenholm, and Co., combined together in Liverpool.

The Sumter at Gibraltar.

The operations of Captain Bullock were manifest about this time in quite another quarter of the globe. The insurgent steamer Sumter put into Gibraltar in January, 1862, out of coal, and not being able immediately to obtain any was obliged to remain there until the United States' man-of-war arrived in those waters. Deeming it impossible to escape she was then offered for sale, and when the sellers came to make title, the officer in charge produced "a power of attorney from a certain Bullock, who styles himself senior naval officer in Europe."¶ Great Britain, in spite of the protests of the United States officials,** permitted a sale to take place,†† and it is not improbable that, if the sale was *bonâ fide*, the money went to the insurgent agents to swell the fund for the payment of the Alabama and the Florida, then in the Mersey.

The Florida at Nassau.

When the Florida reached Nassau, it was again found necessary to depend upon the Liverpool combination for funds.

The insurgent Secretary of the Navy making application to the Secretary of the Treasury for 50,000 dols. to fit out and equip the C. S. steamer Manassas [Florida], "now at Nassau,"‡‡ was answered that "the Department had funds in England," and that he could have "a bill of exchange on England for the amount required."§§ Mallory accepted the suggestion, and requested Memminger to "transmit to Nassau, through Messrs. J. Fraser and Co., of Charleston, a bill of exchange in favour of Lieutenant John N. Maffitt, for fifty thousand dollars ($50,000), or its equivalent in pounds,"‖‖ which was done.

Contracts for constructing six iron-clads.

The construction and dispatch of these vessels were by no means all that was planned in Liverpool during that year. On the 21st day of August, 1862, Mallory, the insurgent Secretary of the Navy, wrote Mr. Jefferson Davis: "A contract has been made *for the construction abroad* and delivery of six iron-clad steam-vessels of war, upon plans and specifications prepared by this Department, which, with the outfits to be

* Dudley to Seward, Vol. III, page 1.
† Dudley to Edwards, Vol. III, page 18.
‡ Dudley to Adams, Vol. III, page 6.
‖ Report of Board of Customs, Vol. III, page 7.
§ Earl Russell to Mr. Adams, 26th September, 1864, Vol. III, page 299.
¶ Sprague to Adams, 9th December, 1862, Vol. II, page 507.
** Sprague to Freeling, Vol. II, page 511.
†† Sprague to Adams, Vol. II, page 515.
‡‡ Mallory to Memminger, 26th May, 1862, Vol. VI, page 84.
§§ Memminger to Mallory, 27th May, 1862, Vol. VI, page 85.
‖‖ Mallory to Memminger, 27th May, 1862, Vol. VI, page 85.

furnished, together with six complete extra engines and boilers, are estimated to cost about $3,500,000."* The estimates annexed to this letter are to the same amount. Thus it appears that, before the 1st of January, 1863, Bullock had dispatched from Great Britain two formidable cruisers, the Alabama and the Florida, to prey upon the commerce of the United States, had sold another cruiser at Gibraltar, and had possibly turned the proceeds into the Treasury of the insurgents, at the office of Fraser, Trenholm, and Co., and had, by himself or through another agent, made some sort of a contract for the construction of six iron-clads; and that Fraser, Trenholm, and Co. had provided the funds for these vessels, and also for what was necessary in order to complete the fitting out of the Florida at Nassau.

Wherein Great Britain failed to perform its Duties as a Neutral.

Contracts for constructing six iron-clads.

Before proceeding further in this history, it is better to pause to take note of two other acts of the Colonial Authorities, which, so far as known, were not censured by Great Britain. The first of these was the hospitality extended to the "Sumter" in Trinidad, in August 1861. She was allowed to remain five days in port, and to "supply herself with coals and other necessary outfits."† The second case was the reception of the Florida at Nassau, in 1863. The Florida steamed into Nassau on the morning of the 26th of January in that year. What took place is thus described by an insurgent writer: "This seems to be our principal port of entry, and the amount of money we throw into the hands of the Nassauites *probably* influences their sentiments in our favour. *We took on board coal and provisions to last us for several months.*"‡

The Sumter at Trinidad.

The Florida at Nassau.

This history has now arrived at the time when the United States were in a position to confirm to Great Britain all, and more than all, that Mr. Adams had represented to Earl Russell as to the course of the insurgents in Liverpool, and to place in the hands of Her Majesty's Government the thread for the discovery of all the violations of British sovereignty, and of all the injuries to the United States perpetrated on British soil, which have been set forth in this paper. On the 19th of January, 1863, Mr. Seward transmitted to Mr. Adams "a copy of some treasonable correspondence of the insurgents at Richmond, with their agents abroad, which throws a flood of light upon the naval preparations they are making in Great Britain."§ On the 9th day of February, 1863, Mr. Adams inclosed this correspondence to Earl Russell, with a note in which he said—what could be said without the least exaggeration—"These papers go to show a deliberate attempt to establish within the limits of this kingdom a system of action in direct hostility to the Government of the United States. This plan embraces not only the building and fitting out of several ships of war under the direction of agents especially commissioned for the purpose, but the preparation of a series of measures under the same auspices for the obtaining from Her Majesty's subjects the pecuniary means essential to the execution of those hostile projects. * * * Taken as a whole, these papers serve most conclusively to show that no respect whatever has been paid in her own realm by these parties to the neutrality declared by Her Majesty at the outset of these hostilities; and that, so far as may be in their power, they are bent on making her kingdom subservient to their purpose of conducting hostilities against a nation with which she is at peace."‖

Mr. Adams represents the foregoing facts to Earl Russell.

Lord Russell delayed his answer to this communication exactly one month. On the 9th day of March, 1863, he made a reply, the substance of which was that Her Majesty's Government would not examine into the truth of Mr. Seward's and Mr. Adams' allegations, because, even if they were true, the papers which had been submitted by Mr. Adams went "merely to show that the agents of the so-called Confederate States resident in this country [Great Britain] have received instructions from their own Government to endeavour to raise money on securities of that Government in England, and to enter into contracts for the purchase of munitions of war, and for the building of iron-clad vessels; but there is no *proof* in these papers that the agents referred to have as yet brought themselves within the reach of any criminal law of the United Kingdom."¶

Earl Russell declines to act.

In order fully to comprehend the force of this answer, it is necessary to ask the Tribunal to pause, for the purpose of inquiring into what had taken place between the two Governments as to the alleged defects in the Foreign Enlistment Act, and as to the necessity of amending it so as to give the Government greater powers.

Inefficiency of the Foreign Enlistment Act.

It was found when the Foreign Enlistment Act of 1819 came to be put into operation,

* Vol. VI, page 96. See also, on the same point, Mallory to Mason, 30th October, 1862, Vol. I, page 573.
† Bernard to Seward, Vol. II, page 485.
‡ Journal of Confederate steamer Florida, Vol. VI, page 335.
§ Seward to Adams, Vol. I, page 546.
‖ Adams to Russell, Vol. I, page 562.
¶ Vol. I, page 578.

Wherein Great Britain failed to perform its Duties as a Neutral.

under the direction of a Government inspired by unfriendly feelings towards the United States, that there were practical and multiplying difficulties in the way of using it so as to prevent the departure of the cruizers. Earl Russell, as early as March 1862, in reply to an earnest representation* made by Mr. Adams under instructions, said that "*the duty of nations in amity with each other is not to suffer their good faith to be violated by evil-disposed persons within their borders, merely from the inefficiency of their prohibitory policy.*"†

Inefficiency of the Foreign Enlistment Act.

Within a few months after this the Alabama escaped from the port of Liverpool, and never returned. The openness and the audacity with which this was done, seemed at one time to induce the British Cabinet to entertain the idea of amending the Foreign Enlistment Act.

Propositions to amend the Foreign Enlistment Act.

On the 19th day of December, 1862,‡ Lord Russell, in reply to what he called Mr. Adams' "demand for a more effective prevention for the future of the fitting out of such vessels from British ports," informed him that Her Majesty's Government were "of opinion that certain amendments might be introduced into the Foreign Enlistment Act, which, if sanctioned by Parliament, would have the effect of giving greater power to the Executive *to prevent the construction in British ports of ships destined for the use of belligerents.*" He also said that he was ready at any time to confer with Mr. Adams, and to listen to any suggestions which he might have to make by which the British Foreign Enlistment Act and the corresponding Statute of the United States might be made more efficient for their purpose.

Propositions declined by Great Britain.

Mr. Adams communicated with his Government, and, having obtained instructions, informed Lord Russell that his "suggestion of possible amendments to the enlistment laws, in order to make them more effective, had been favourably received. Although the law of the United States was considered of very sufficient vigour, the Government were not unwilling to consider propositions to improve upon it." Lord Russell replied that, since his note was written, the subject had been considered in Cabinet, and the Lord Chancellor had expressed the opinion that the British law was sufficiently effective, and that under these circumstances he did not see that he could have any change to propose.§

The United States are unable to state what amendments to the Foreign Enlistment Acts of the two countries the British Government might have proposed had they not changed their minds between December 1862 and March 1863. It is to be presumed, from the use of the word "*construction*" in Lord Russell's note, that it was in contemplation to make some proposition to remedy a supposed defect in the British Statute as to the *construction* of a vessel intended to carry on war, as distinguished from the "*equipping, furnishing, fitting out, or arming*" such a vessel. It was understood to be the opinion of the British lawyers that the construction of such a vessel was not an offence under the Act of 1819. It is also possible that her Majesty's Government may have desired to give to the Executive in Great Britain some power similar to that possessed by the Executive of the United States for the arrest of vessels so constructed. As the proposal for negotiations on the subject was withdrawn, it is impossible to do more than conjecture what was contemplated.

From the hour when Lord Russell informed Mr. Adams that the Lord Chancellor was satisfied that the British laws were sufficiently effective, the British Government resisted every attempt to change the laws and give them more vigour.

Propositions renewed and declined.

Mr. Adams again, on the 26th of March, 1863, sought an interview with Lord Russell on the subject of the rebel hostile operations in British territory. What took place there is described by Lord Russell in a letter written on the following day to Lord Lyons:‖ "With respect to the law itself, Mr. Adams said either it was sufficient for the purposes of neutrality, and then let the British Government enforce it; *or it was insufficient, and then let the British Government apply to Parliament to amend it.* I said that the Cabinet were of opinion that the law was sufficient, but that legal evidence could not always be procured; that the British Government had done everything in its power to execute the law, *but I admitted that the cases of the Alabama and Oreto were a scandal, and in some degree, a reproach to our laws.*

The Tribunal of Arbitration will thus see that about three weeks before Earl Russell made his extraordinary official reply to the representations of Mr. Adams, he had informed Mr. Adams "that the Lord Chancellor had expressed the opinion that

* Adams to Russell, Vol. 1, page 30.
† Russell to Adams, Vol. I, page 533.
‡ Russell to Adams, Vol. I, page 667.
§ Adams to Seward, Vol. I, page 668.
‖ Vol. I, page 585. See also Mr. Hammond's letter to Messrs. Lamport and Holt and others, Vol. I, page 602; also Lord Palmerston's speech already cited, Vol. IV, page 530.

the British [neutrality] law was sufficiently effective, and that, under these circumstances, he did not see that he could have any change to propose "[1] in it. It will also now be observed that when that declaration was made, Mr. Adams' note of February 9, 1863, with the proof of the complicity of the insurgent agents in England, had been in Earl Russell's portfolio four days. It will also be observed that that proof established, or afforded to Earl Russell the clue by which he could, and, as the United States say, should have satisfied himself—1. "That contracts were already made for the construction of iron-clad 'fighting-ships' in England."[2] 2. That Fraser, Trenholm, and Co. were the "depositaries" of the insurgents in Liverpool, and that the money in their hands was "to be applied to the contracts."[3] 3. That they (F., T., and Co.) were to pay purchases made by Mr. Huse and other agents.[4] 4. That other contracts for the construction of vessels besides those for the six iron-clads had been taken by parties in Great Britain.[5] 5. That parties in England were arranging for an insurgent cotton loan, the proceeds of which were to be deposited with Fraser, Trenholm, and Co. for the purpose of carrying out all these contracts.[6]

Wherein Great Britain failed to perform its Duties as a Neutral.

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Propositions renewed and declined.

When the United States found that the proof of such aggravated wrong was not deemed worthy of investigation by Her Majesty's Government, because it contained no statements which could be used as evidence to convict a criminal before an English jury,[7] they were most reluctantly forced from that time forward, throughout the struggle, to believe, that no complaints would be listened to by Her Majesty's Government which were not accompanied by proof that the persons complained of had brought themselves "within reach of the criminal law of the United Kingdom;" that the penal provisions of the Foreign Enlistment Act of 1819 were to be taken by Great Britain as the measure of its duty as a neutral; and that no amendment or change in that Act was to be made with the assent of the existing Government.

They earnestly and confidently insist before this Tribunal, that this decision of Her Majesty's Government was in violation of its obligations toward the United States; that it was an abandonment, in advance, not only of that "due diligence" which is defined in the Treaty of Washington as one of the duties of a neutral, but of any measure of diligence, to restrain the insurgents from using its territory for purposes hostile to the United States.

These proceedings were an abandonment, in advance of "due diligence."

Encouraged by the immunity afforded by these several decisions of Her Majesty's Government, the insurgent agents in Great Britain began to extend their operations.

Early in April, 1863, a steamer called the "Japan," which was afterwards known as the "Georgia," left the Clyde, "with the intent to depredate on the commerce of the United States."[8] This vessel had been publicly launched on the 10th of the previous January as an insurgent steamer, at which time a "Miss North, daughter of a Captain North, of one of the Confederate States, officiated as priestess, and christened the craft Virginia."[9] "Some seventy or eighty men, twice the number that would be required for any legitimate voyage, were shipped at Liverpool for this vessel, and sent to Greenock."[10] A small steamer called the Alar, belonging to a British subject, was loaded with a large supply of guns, shells, shot, powder, &c.,"[11] and dispatched to meet her. The two vessels met off the French coast; the Alar was made fast alongside the Japan, and in twenty-four hours the whole of the guns and ammunition were transferred."[12] The Japan then dropped her Oriental name, hoisted the flag of the insurgents, and steamed away; one day's work after leaving the Clyde having converted her into an armed cruizer. It was not, however, until the 23rd of the following June that her British register was cancelled and the transfer made to foreign owners.[13]

The Georgia.

[1] Vol. I, page 668.
[2] Mallory to Mason, Vol. I, page 573.
[3] Memminger to Spence, Vol. I, page 574.
[4] Memminger to Fraser, Trenholm, and Co., Vol. I, page 574; and same to same, Vol. I, page 575.
[5] Memorandum No. 11, in Vol. I, page 572.
[6] Benjamin to Mason, Vol. I, page 564, Memminger to Mason, Vol. I, page 565. Memminger to Spence, Vol. I, page 574. Memminger to Fraser, Trenholm, and Co., Vol. I, page 574.
[7] It is supposed to be a principle of English law that a person accused of crime has the right to have the witnesses against him subjected to a personal cross-examination. The absurdity of Earl Russell's position is shown by the fact that every witness whose correspondence was inclosed in Mr. Adams' note of February 9, 1863, was then in Richmond, behind the bayonets of General Lee's army.
[8] Mr. Adams to Earl Russell, Vol. II, page 666.
[9] Underwood to Seward, January 16, 1863, Vol. VI, page 503.
[10] Dudley to Mr. Seward, Vol. II, page 665.
[11] Vol. II, page 666.
[12] Mahon's affidavit, Vol. II, page 673.
[13] Mr. Adams to Earl Russell, July 7, 1863, Vol. II, page 677.

Wherein Great Britain failed to perform its Duties as a Neutral.

The Alexandra.

Early in March 1863, Miller and Son, the builders of the Florida, launched, at their yard in Liverpool, a new gun-boat, to be called the Alexandra.* The evidence of the hostile uses for which this vessel was intended was so overwhelming that proceedings were instituted against her for a violation of the Foreign Enlistment Act.† In the trial of this case it was clearly proved that the Alexandra was a man-of-war, and that she was constructed for the purpose of carrying on hostilities against the United States.‡ But the judge instructed the jury that a neutral might "make a vessel and arm it, and then offer it for sale"§ to a belligerent; and that, *a fortiori*, "if any man may build a vessel for the purpose of offering it to either of the belligerent Powers who is minded to have it, may he not execute an order for it?" He also instructed them that "to 'equip' is 'to furnish with arms;'" "in the case of a ship, especially, it is to furnish and complete with arms;"‖ that "'equip,' 'furnish,' 'fit out,' or 'arm,' all mean precisely the same thing;" and he closed that branch of the instructions by saying, "the question is whether you think that this vessel was fitted. Armed she certainly was not, but was there an intention that she should be finished, fitted, or equipped, in Liverpool? Because, gentlemen, I must say, it seems to me that the Alabama sailed away from Liverpool without any arms at all; merely a ship in ballast, unfurnished, unequipped, unprepared; and her arms were put in at Terceira, not a port in Her Majesty's Dominions. The Foreign Enlistment Act is no more violated by that than by any other indifferent matter that might happen about a boat of any kind whatever." The jury gave a verdict without delay for the gun-boat. An appeal on this construction of the statute was taken to a higher Court. The rulings of the Judge on the trial were not reversed, and the decision stood as the law of England until and after the close of the rebellion, and still stands as the judicial construction of the Act of 1819.

The rulings in the Alexandra emasculated the Foreign Enlistment Act.

Thus, after the political branch of Her Majesty's Government had announced its purpose of limiting its duties to the enforcement of the Foreign Enlistment Act, and had practically stripped that Act of all features except those relating to the prosecution of offenders as criminals, the judicial branch of that Government emasculated it by a ruling which openly authorized the construction of new Alabamas and of new Floridas.

Contracts were also made, some time in the year 1862, for the construction at Glasgow of a formidable vessel, known as the Pampero. Mr. Dudley reported that the cost of the construction was to be something over 300,000*l.*¶ This vessel was seized at Glasgow for an alleged violation of the Foreign Enlistment Act. On the trial, which took place in 1864, it appeared that the Scottish Courts were not disposed to follow the English courts in depriving the Foreign Enlistment Act of all force. The insurgents, therefore, abandoned the attempt to use the Pampero as a cruizer, and ceased to contract for the construction or fitting out of vessels within the Scottish Kingdom. A similar course in the English Courts might have produced similar results in England.

Lairds' iron-clad rams.

About the same time the arrangements were made with the Lairds for the construction, at Birkenhead, opposite Liverpool, of the two iron-clads which were afterknown as "Laird's iron-clads," or "Lairds' rams." The keel of one of them, as has been already said, was laid in the same stocks from which the Alabama was launched.** These vessels were most formidable, and were "pushed forward with all possible dispatch. The men were at work night and day upon them." The machinery and guns were made simultaneously with the hull, and it was reported that "by the time she is launched they will be ready to be placed in her."††

* Dudley to Seward, March 11, 1863, Vol. II, page 258.

† See Vol. V, pp. 1–470.

‡ "The evidence as to the build and fittings of the ship proved that she was strongly built, principally of teak-wood; her beams and hatches, in strength and distance apart, were greater than those in merchant vessels; the length and breadth of her hatches were less than the length and breadth of hatches in merchant vessels; her bulwarks were strong and low, and her upper works were of pitch-pine. At the time of her seizure workmen were employed in fitting her with stanchions for hammock nettings; iron stanchions were fitted in the hold; her three masts were up, and had lightning conductors on each of them; she was provided with a cooking apparatus for 150 or 200 people; she had complete accommodation for men and officers; she had only stowage room sufficient for her crew, supposing them to be thirty-two men; and she was apparently built for a gun-boat, with low bulwarks, over which pivot guns could play. The commander of Her Majesty's ship Majestic, stationed at Liverpool, said that she was not intended for mercantile purposes." (*Neutrality of Great Britain during the American Civil War, by Mountague Bernard, M.A.*, page 353, note 1.)

§ Vol. V, page 128.

‖ Vol. V, page 129.

¶ Dudley to Seward, Vol. II, page 201.

** Dudley to Seward, Vol. II, page 315.

†† Dudley to Seward, Vol. II, page 316.

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Lairds' iron-clad rams.

Their construction was originally ordered from Richmond, and they were superintended by Captain Bullock,[1] who was at that time in frequent correspondence with Mr. Mallory "about building the two above-named and other war vessels in England," "and about the money to pay for the same."[1] "The drawings for them were in the office of Fraser, Trenholm, and Co., as early as June 1862 in Captain Bullock's hands."[2] By the early part of April 1863, "the hulls were complete, and the sides were covered with slabs of teak-wood about 12-inches thick." Early in June 1863, one of the vessels had begun to receive her iron armour plates, "about 4-inches thick." "The deck of each vessel was prepared to receive two turrets."[3] "Each ram had a stem, made of wrought iron, about 8-inches thick, projecting about 5 feet under the water-line, and obviously intended for the purpose of penetrating and destroying other vessels."[4] These facts, and others, were communicated by Mr. Adams to Earl Russell in a note dated July 11, 1863.[5] Commenting upon them, Mr. Adams said: "A war has thus been practically conducted by a portion of her people against a Government with which Her Majesty is under the most solemn of all national engagements to preserve a lasting and durable peace." On the 16th of July, Mr. Adams sent to Lord Russell further evidence of the character of these vessels.[6] On the 25th of July he again wrote to him on the subject, with fresh proof of their purposes.[7] On the 14th of August he again wrote to Earl Russell with "further information;" said that he regretted to see "that the preparation * * * is not intermitted;" and added: "It is difficult for me to give to your Lordship an adequate idea of the uneasiness and anxiety created in the different ports of the United States by the idea that instruments of injury, of so formidable a character, continue to threaten their safety, as issuing from the ports of Great Britain, a country with which the people of the United States are at peace."[8] On the 3rd of September Mr. Adams again earnestly returned to the subject. He wrote to Earl Russell, inclosing "copies of further depositions relating to the launching and other preparation of the second of the two vessels of war from the yard of Messrs. Laird, at Birkenhead."[9] He said that he believed there was "not any reasonable ground for doubt that these vessels, if permitted to leave the port of Liverpool, will be at once devoted to the object of carrying on war againt the United States of America," and he closed by saying that he had been directed "to describe the grave nature of the situation in which both countries must be placed, in the event of an act of aggression committed against the Government and the people of the United States by either of these formidable vessels." The new evidence inclosed in this letter related only to the fact that the second ram was launched, and cannot be said to have strengthened the case as previously presented. Again, on the 4th of September, Mr. Adams sent to the Foreign Office evidence to show the preparation for immediate departure of one of these vessels.[10] Late in the afternoon of the 4th; after the note had been dispatched to Earl Russell and a copy of it sent to Mr. Seward, Mr. Adams received from Earl Russell a note, dated the 1st of September, saying that "Her Majesty's Government are advised that they cannot interfere in any way with these vessels."[11] On the 5th Mr. Adams replied, expressing his "profound regret at the conclusion to which Her Majesty's Government have arrived;" and added: "It would be superfluous in me to point out to your Lordship that this is war,"[12] On the 8th of September Mr. Adams received a short note, written in the third person, in which it was said "instructions have been issued which will prevent the departure of the two iron-clad vessels from Liverpool."[13] It would appear from the British Blue Book that the instructions for their detention "had scarcely been sent" when Mr. Adams' note of the 3rd September was received at the Foreign Office.[14]

Their detention not an abandonment of the lax construction of the duties of a neutral.

There was little in all this transaction to lead the United States to hope for a returning and better sense of justice in the British Government. For they could not but observe, when comparing the dates of the receipt of the several notes which passed

1 Younge's deposition, Vol. II, page 330.
2 Younge's deposition, Vol. II, page 331.
3 Chapman's affidavit, Vol. II, page 333.
4 Chapman's affidavit, Vol. II, page 333.
5 Adams to Russell, Vol. II, page 325.
6 Adams to Russell, Vol. II, page 336.
7 Adams to Russell, Vol. II, page 341.
8 Vol. II, pp. 346–347.
9 Adams to Russell, Vol. II, page 353.
10 Adams to Russell, September 4, 1863, Vol. II, page 358.
11 Russell to Adams, Vol. II, page 360.
12 Adams to Russell, Vol. II, page 365.
13 Russell to Adams, Vol. II, page 366.
14 Layard to Stuart, Vol. II, page 363.

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Their detention not an abandonment of the lax construction of the duties of a Neutral.

between Lord Russell and Mr. Adams, that when Her Majesty's Government, after a delay of six weeks, answered that it could not interfere with these vessels, it was in possession of convincing evidence of their character and destination, which was not materially, if at all, strengthened by the evidence contained in Mr. Adams' letter of the 3rd of September. They were therefore forced to conclude that, in detaining the vessels, Her Majesty's Government was influenced, not by a change in their opinion as to the force or effect of the Foreign Enlistment Act, or as to the duty of Great Britain toward the United States, but solely by a desire to avoid, in the interest of peace, what Mr. Adams called "the grave nature of the situation in which both countries must be placed, in the event of an act of aggression committed against the Government and people of the United States by either of these formidable vessels." The United States fully and earnestly shared this desire with Great Britain, and they were relieved from a state of painful suspense when the dangers which Mr. Adams pointed out were averted. But they would have felt a still greater relief, could they have received at that time the assurance, or could they have seen in the transaction any evidence from which they could assume, that the Executive Branch of the British Government was no longer of the opinion expressed in Lord Russell's note of September 1 as to its duties in regard to evidence such as that inclosed in Mr. Adams' previous notes, and no longer intended to regard the Foreign Enlistment Act, as expounded by the Court in the Alexandra case, as the measure of its international duties.

The contracts with Arman for the construction of vessels in France.

Extensive as were the arrangements made from Liverpool by the insurgent agents, at that time, for the construction in Great Britain of vessels of war intended to carry on war against the United States, their operations were not confined to Great Britain. Captain Bullock, without shifting his office from Liverpool, signed an agreement, "for the account of his principals," on the 16th of April, 1863, with Lucien Arman, ship-builder at Bordeaux, whereby M. Arman engaged "to construct four steamers of 400 horse-power, and arranged for the reception of an armament of from ten to twelve cannon." As it was necessary in France to obtain the consent of the Government to the armament of such vessels within the limits of the Empire, M. Arman informed the Government that these vessels were "intended to establish a regular communication between Shanghai, Yedo, and San Francisco, passing the strait of Van Dieman, and also that they are to be fitted out, should the opportunity present itself, for sale to the Chinese or Japanese Empire." On this representation permission was given to arm them, the armament of two to be supplied by M. Arman at Bordeaux, and that of the other two by M. Vorus at Nantes.

On the 16th of July, 1863, another agreement was made in Bordeaux between M. Arman and Mr. Bullock, "acting for the account of principals." Arman agreed to construct two screw steamships of wood and iron, with iron turrets, of 300 horse-power. Bullock was to supply the armament; the ships were to be finished in six months; one-fifth of the price was to be paid in advance.

Under these contracts Bullock is said to have paid Arman 5,280,000 francs.* But one of the vessels ever went into the possession of the insurgents, and that by fraud. It may interest the Tribunal of Arbitration to learn, in a few words, the result of these contracts and the course pursued by the French Government.

Conduct of the French Government.

The authorization which had been obtained for M. Arman and M. Vorus to arm the four vessels, under the contract of the 15th April, and the doings of M. Arnam under the contract of the 16th of July, were unknown to the Minister for Foreign Affairs. When they were brought to M. Drouyn de Lhuy's attention, by the Minister of the United States at Paris, he took immediate steps to prevent a violation of the neutrality of France. He wrote to Mr. Drayton (October 22, 1863), "Que M. le Ministre de la Marine vient de notifier à M. Vorus le retrait de l'autorisation qu'il avait obtenue pour l'armement de quatre navires en construction à Nantes et à Bordeaux. Il en à été donné égale nent avis à M. Arman, dont l'attention a été en même temps appelée sur la responsabilité qu'il pourrait encourir par des actes en opposition avec la déclaration du 11 Juin, 1861."

Mr. Arman made many efforts to remove the injunctions of the Government, but without success. He was finally forced to sell to the Prussian Government two of the clippers constructed at Bordeaux under the contract of April 15. Two other clippers, constructed at Nantes under that contract, were sold to the Peruvian Government. Of the two iron-clads constructed under the contract of July 16, one was sold to Prussia

* Mr. M. Moreau, Counsel for the United States in a suit pending before the Cour d'Appel de Paris, growing out of these transactions, so states:—"Il nous reste maintenant à indiquer à la cour ce que fit M. Arman, et des navires qu'il construisait et des capitaux qu'il avait reçus de M. Bullock, capitaux dont le montant, suivant le dire de M. Arman lui-même, ne s'élève pas à moins de 5,280,000 francs."

for 2,075,060 francs. A contract was made for the sale of the other to Denmark, which was then at war, and it was sent, under the Danish name of Stoerkodder, to Copenhagen for delivery. It arrived there after the time agreed upon for delivery and after the war was over; and the Danish Government refused to accept it. The person in charge of the vessel in Copenhagen held at once the power of attorney of M. Arman and of Mr. Bullock; and in one capacity he delivered the vessel to himself in the other capacity, and took her to the Isle of Houat, off the French coast, where she was met by a steamer from England with an armament. Taking this on board, she crossed the Atlantic, stopping in Spain and Portugal on the way. In the port of Havana news was received of the suppression of the insurrection, and she was delivered to the authorities of the United States. The course pursued by France toward these vessels is in striking contrast with Great Britain's conduct in the cases of the Florida and the Alabama.

Wherein Great Britain failed to perform its Duties as a Neutral.

Conduct of the French Government.

Contrast between the conduct of France and of Great Britain.

Bullock's operations in this way called for a great deal of money. On the 22nd May, 1863, a "navy warrant on Messrs. Fraser, Trenholm, and Co., for 300,000*l.*" was sent to him.* On the 25th June, 1863, "drafts for 26,000*l.* and 38,962*l.* 13*s.* 4*d.*, in favour of Commander James D. Bullock, on the C. S. Depositary in Liverpool, were forwarded to him."† Other funds were sent that the United States are not able to trace. In September 1863 his contracts had been so heavy that he was low in funds. Maffitt sent to him at Liverpool a number of "men, discharged from the Florida, with their accounts and discharges."‡ He could not pay them, and the men "began to get restive." Mallory made an effort to send him further funds, and asked Memminger to instruct "the Depositary at Liverpool" to countersign certain cotton certificates "on the application of Commander Bullock."§ In this, or in some other way, the funds were replenished, and large sums were spent after that time.

While these extensive preparations for a fleet were going on in England and France, an event took place at the Cape of Good Hope which tested afresh the purpose of Her Majesty's Government to maintain British neutrality and enforce the Queen's Proclamation.

On the 5th of August, 1863, the Alabama arrived in Table Bay and gave information that the Tuscaloosa, a prize that had been captured off Brazil, would soon arrive in the character of a tender. On the 8th that vessel arrived in Simon's Bay, having her original cargo of wool on board. She lay in port about a week, and while there "overtures were made by some parties in Cape Town to purchase the cargo of wool."‖ The wool was disposed of to a Cape Town merchant, on condition that he should send it to Europe for sale, and two-thirds of the price should be paid into the insurgent Treasury; and it was landed for that purpose by the Tuscaloosa, on a wild spot, called Angra Pequena, outside of British jurisdiction.¶ When the Tuscaloosa made her appearance at Cape Town, Rear-Admiral Sir Baldwin Walker wrote to the Governor, desiring to know "whether this vessel ought still to be looked upon in the light of a prize, she never having been condemned in a prize court."** He was instructed to admit the vessel. The practical experience of the honest sailor rebelled at this decision, and he replied, "I apprehend that, to bring a captured vessel under the denomination of a vessel of war, she must be fitted for warlike purposes, and not merely have a few men and a few small guns put on board her (in fact, nothing but a prize crew), in order to disguise her real character as a prize. Now, this vessel has her original cargo of wool still on board, which cannot be required for warlike purposes, and her armament and number of her crew are quite insufficient for any services other than those of slight defence. Viewing all these circumstances of the case, they afford room for the supposition that the vessel is styled a tender, with the object of avoiding the prohibition against her entrance as a prize into our ports, where, if the captors wished, arrangements could be made for the disposal of her valuable cargo."††

The Tuscaloosa at the Cape of Good Hope.

The Governor replied that the Attorney-General was of opinion that "if the vessel received the two guns from the Alabama or other Confederate vessel of war, or if the person in command of her has a commission of war, * * * there will be a sufficient setting forth as a vessel of war to justify her being held to be a ship

She is released against the advice of Sir Baldwin Walker.

* Bullock to Elmore, July 3, 1863, Vol. VI, page 129.
† Mallory to Elmore, June 25, 1863, Vol. VI, page 126.
‡ Maffitt to Bullock, September 3, 1863, Vol. II, page 639.
§ Mallory to Memminger, September 12, 1863, Vol. VI, page 132.
‖ Walker to the Secretary of the Admiralty, Vol. IV, page 216; Vol. VI, page 456.
¶ Mountague Bernard's Neutrality of Great Britain, &c., page 421, note 1.
** Vol. IV, page 217; Vol. VI, page 458.
†† Walker to Wodehouse, Vol. IV, page 218; Vol. VI, page 459.

Wherein Great Britain failed to perform its Duties as a Neutral.

of war."* The Admiral replied, tersely, "As there are two guns on board, and an officer of the Alabama in charge of her, the vessel appears to come within the meaning of the cases cited in your communication."† He did not seem to think it worth while to repeat his opinion as to the frivolous character of such evidence, since it had been disregarded by the civil authorities.

She is released against the advice of Sir Baldwin Walker.

The course of the Governor disapproved.

The facts were in due course reported by the Governor to the Home Government at London,‡ and the Colonial Minister wrote back that Her Majesty's Government were of opinion that the Tuscaloosa did not lose the character of a prize captured by the Alabama merely because she was at the time of her being brought within British waters armed with two small rifle guns, and manned with a crew of ten men from the Alabama, and used as a tender to that vessel under the authority of Captain Semmes.§ He said that he "considered that the mode of proceeding in such circumstances most consistent with Her Majesty's dignity, and most proper for the vindication of Her territorial rights, would have been to prohibit the exercise of any further control over the Tuscaloosa by the captors, and to retain that vessel under Her Majesty's control and jurisdiction until properly reclaimed by her original owners." These instructions were looked upon by the Governor as a censure;‖ and the Tuscaloosa having in the meantime come again into port and placed herself within the jurisdiction, was seized, and the facts reported to London.¶ Her Majesty's Government disavowed this act, and instructed the Governor "to restore the Tuscaloosa to the lieutenant of the Confederate States who lately commanded her; or, if he should have left the Cape, then to retain her until she can be handed over to some person who may have authority from Captain Semmes, of the Alabama, or from the Government of the Confederate States, to receive her."** The Governor was also informed that the Home Government had not in any degree censured him for the course which he had pursued.†† The Duke of Newcastle placed his instructions to restore the vessel upon "the peculiar circumstances of this case." But the Tribunal of Arbitration will observe that, inasmuch as, notwithstanding his first decision of the 4th of November above cited, he did, in his second instructions fully approve of the course of the Governor in receiving the vessel originally as a man-of-war, in violation of the Queen's Proclamation and of well-settled principles of International Law, and against the sensible and honest advice of Rear-Admiral Sir Baldwin Walker, he was in no position to shelter the British Government from responsibility for the hostile act of her officials, by pleading any special or peculiar circumstances.

The Tuscaloosa comes again into the waters of the Colony.

The Governor reverses his policy and seizes the vessel.

His course is again disapproved.

Blockade running.

It is necessary now to go back and bring up the history of army purchases and blockade-running. Walker and Porter were left established as agents at Bermuda, and Heyliger at Nassau.

On the 28th of March, 1863, Fraser, Trenholm, and Co. were notified that the insurgent Secretary of the Treasury had "appointed Mr. Lewis Heyliger a depositary of the Treasury at Nassau, New Providence, and Colonel Norman S. Walker a depositary at Bermuda;"‡‡ and they were told that Messrs. Heyliger and Walker would forward shipments of cotton on account of the Treasury, and would draw on them for funds to pay expenses of the vessels, and to make purchases of return cargoes. They were also informed that shipments of cotton would be made by way of Nassau and Bermuda by the authorities at Richmond, and they were directed to pay the proceeds of such shipments to Mr. Huse. The cotton was sent forward as opportunity offered. Thus, for instance, in May, 1863, the navy transported to Nassau five hundred and seventy-five bales for the Treasury.§§ The shipments were in fact going whenever there was opportunity.

Mr. J. M. Seixas was also appointed agent of the insurgent War Department in the ports of Wilmington and Charleston, "to take charge of all that relates to the *running of the steamers of the Department* sailing from and arriving at those ports."‖‖

Cotton shipments.

On the 18th of April, 1863, Walker forwarded to Fraser, Trenholm, and Co. 800

* Wodehouse to Walker, Vol. IV, page 219; Vol. VI, page 459.
† Walker to Wodehouse, Vol. IV, page 219; Vol. VI, page 460.
‡ Wodehouse to Duke of Newcastle, Vol. VI, page 220; Vol. IV, page 460.
§ Bernard's Neutrality of Great Britain during the American Civil War, page 425. See also Vol. III, page 207, and Vol. VI, page 463.
‖ Wodehouse to Newcastle, Vol. IV, page 229; Vol. VI, page 465.
¶ Vol. IV, page 230.
** Duke of Newcastle to Sir P. Woodhouse, Vol. IV, page 241; Vol. VI, page 468.
†† Same to same, March 10, Vol. IV, page 242; Vol. VI, page 469.
§§ Memminger to Fraser, Trenholm, and Co., March 28, 1863, Vol. VI, page 128.
‡‡ Memminger to Mallory, May 6, 1863, Vol. VI, page 119.
‖‖ Seddon to Seixas, April 7, 1863, Vol. VI, page 113.

bales of cotton, drew against it for 20,000*l.* for his own disbursements for commissary stores, and notified Huse that the balance would go to his credit with Fraser, Trenholm, and Co. He also reported the arrival at Bermuda of Confederate steamers, blockade-runners, with cotton, and he called Huse's attention to "the importance of sending to this place [Bermuda] one or two cargoes of Duffryne coal *for the Government steamers;*" and adds: "You will readily see the injurious delay which may result from the want of a proper supply of coal." He also says: *From all that I can learn, any Confederate man-of-war which may come to this port will have no difficulty in coaling and procuring supplies.*"[1]

Wherein Great Britain failed to perform its Duties as a Neutral.

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Cotton shipments.

The blockade-runners of the Richmond authorities were by this time well known, and were making regular voyages. The Cornubia was running before January, 1863.[2] The Giraffe and the Cornubia ran regularly to Bermuda and to Nassau,[3] in February, 1863. One or two more were thought "highly desirable." In March there was "enough to employ three steamers for some time to come," and Huse was authorized "to add to the fleet two more good swift steamers,"[4] and was furnished with a credit of 200,000*l.* on Fraser, Trenholm, and Co.[5]

The insurgent government was all this while urging its agents to dispatch arms and munitions of war. In April 1863, twenty thousand Enfield rifle bayonets were wanted as soon as possible.[6] On the 6th of May "one hundred and fifty thousand bayonets" were wanted, and "lead and saltpetre in large quantities."[7] On the 1st of June, Walker is ordered to send "paper for making cartridges by the first boat;" "if there is none on hand send immediately to Major Huse to buy a large quantity."[8] Two days later he was ordered to send "Colt's pistol-caps as soon as possible."[9] They were wanted for Lee, who was preparing to move toward Gettysburg.

Walker shows in all this emergency a fear of being crippled for want of coal. On the 21st of March he was arranging for a cargo in the port of Bermuda.[10] On the 29th of March he writes that he has purchased that cargo, and wants more.[11] On the 16th of May he urges Huse to send coal. "Every steamer takes from one hundred and sixty to one hundred and eighty tons." He has but six hundred tons left.[12] On the 23rd of May he again calls attention "most earnestly to the importance of keeping him supplied with good steam coal." He "hopes that some are already on the way." His "stock is almost exhausted."[13] On the 30th of June he cries "send us coal, coal, coal! Each steamer takes one hundred and eighty tons, so that six hundred tons will be quickly consumed."[14] Again, on the 9th of July he writes "coal, coal, coal. Send me two thousand tons. The Lee, I fear, will be laid up for the want of it. You may calculate that each steamer will take one hundred and eighty tons."[15] He wrote also to Fraser, Trenholm, and Co., to the same effect, saying that there should be a reserve there of at least three or four thousand tons."[16] Shipments were made, and the supplies reached him before there was any serious detention of the blockade-runners. He was enabled to fulfil all the orders given in Richmond a short time before the advance of Lee's army into Pennsylvania.

The insurgent Government interested in blockade running.

In spite of the countenance given by the authorities in Bermuda and Nassau, funds could not be forwarded fast enough to Major Huse to meet the great demands made upon him at this time. On the 23rd of July, 1863, "on behalf of the Confederate Government," he made an arrangement with the Mercantile Trading Company for an advance of 150,000*l.*, to be extended to 300,000*l.*, for the purchase of goods for the insurgents, and their shipment by the Company, "viâ Bermuda, Nassau, or Havana;" the Confederate Government to have two-thirds cargo space in each vessel, the company one-third each way;" "the cotton received from the Confederate States to be consigned to the Company's agency in Liverpool."[17] Stringer, the managing director

[1] Walker to Huse, April 18, 1862, Vol. VI, page 115.
[2] Gorgas to Huse, January 1, 1863, Vol. VII, page 48.
[3] Same to same, February 26, 1863, Vol. VII, page 48.
[4] Same to same, March 8, Vol. VII, page 48.
[5] Same to same, March 9, Vol. VII, page 49.
[6] Gorgas to Huse, Vol. VII, page 51.
[7] Same to same, May 6, Vol. VII, page 51.
[8] Gorgas to Walker, Vol. VII, page 54.
[9] Same to same, Vol. VII, page 54.
[10] Walker to Huse, March 21, Vol. VII, page 50.
[11] Same to same, Vol. VII, page 50.
[12] Same to same, May 16, 1863, Vol. VII, page 52.
[13] Same to same, Vol. VII, page 53.
[14] Same to same, Vol. VII, page 55.
[15] Same to same, Vol. VII, page 56.
[16] Walker to Huse, Vol. VII, page 57.
[17] Memorandum made in London July 23, 1863, Vol. VI, page 136.

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The insurgent Government interested in blockade running.

of the Company, soon became doubtful of Huse's powers, and wrote to Mr. Mason, saying, that he had already advanced him 20,000*l.* on saltpetre, and inquiring about the powers;* to which Mason replied that he did not know about the extent of Huse's powers, but that he had no doubt but that the saltpetre would be taken by the insurgents.† Stringer's doubts were soon set at rest; for it would seem that about that time there must have been received in London an agreement without date, executed in Richmond by "J. Gorgas, Colonel, Chief of Ordnance," and "approved" by "J. A. Seddon, Secretary of War," whichprobably replaced the temporary agreement of July 23. Five steamers were to be put on to run from Bermuda or Nassau to Charleston or Wilmington, two-thirds to be owned by the insurgents, ond one-third by the British contractors. The insurgents were to pay for their two-thirds in cotton, at Charleston, and were to be allowed commissions for their part of the work, the other contracting parties having a similar allowance. The portion of the proceeds of cotton belonging to the insurgents was "to be paid to the credit of the War Department with Messrs. Fraser, Trenholm, and Co., of Liverpool." The insurgents were to furnish officers to command the vessels. The document was signed by "C. E. Thorburn," and by "Chas. H. Reid and Co.," and by "The Mercantile Trading Co., Limited; Edgar P. Stringer, Managing Director, London, 23rd September, 1863."‡ Mr. Thorburn was a shareholder in the Trading Company,§ and on the 3rd October Mr. Stringer is found corresponding with him about the purchase of these vessels.‖

Meanwhile the operations of the insurgents at Nassau and Bermuda had gone on with even more vigour than during the previous year. Huse's credit had been strained to the utmost, but was now restored. The purchases and supplies for the Quartermaster's Department appear to have been transferred during this summer exclusively to Nassau. Seixas was instructed to place one thousand bales of cotton at Nassau for the Quartermaster's Department, before the close of the year, and was told that "the wants of the Quartermaster General are at Nassau, not Bermuda."¶

Heyliger diligently complied with his instructions to forward quartermaster's stores. On the 29th October he sent 40 tons by the Antonica, Margaret, and Jessie. On the 2nd November he shipped by the Hansa 19 tons; the next day by the Beauregard 40 or 50 tons; and a large quantity by the Alice; and on the 5th November he sent 20 tons by the Banshee. The Margaret and the Jessie were captured; the others ran the blockade. The Quartermaster's Department was much employed in collecting and forwarding cotton to meet these purchases.**

Major Ferguson was in Liverpool at this time as an agent for the purchase of quartermaster's stores, and was sending large amounts forward. Fraser, Trenholm, and Co. refused his drafts, because Heyliger had already overdrawn the Quartermaster's account.†† Ferguson thereupon wrote, urging that cotton should be forwarded. "I have," he says, "more faith in cotton than I ever had. If we can but get that out, we can buy all England, for most of the men, as well as their merchandize, have a price."‡‡

These facts brought to Earl Russell's notice.

On the 3rd of November, 1863, Mr. Adams laid before Earl Russell "new proofs of the manner in which the neutrality of Her Majesty's ports is abused by the insurgents in the United States in order the more effectually to procrastinate their resistance," which he contended showed the "establishment in the port of St. George's, in the island of Bermuda, of a depot of naval stores for their use and benefit in the prosecution of the war."§§ This information should have put Lord Russell on the track of all the facts in regard to Bermuda. Had Her Majesty's Government pursued the investigations to which it gave them the clue, it would have done so. Earl Russell, on the 27th of November, answered that "Her Majesty's Government do not consider that they can properly interfere in this matter."‖‖ The dates would seem to indicate a possibility that no inquiries were made at Bermuda.

He sees no offence in them.

On the 29th of December, 1863, Mr. Adams wrote Earl Russell that he had "information entitled to credit," that Ralph Cator, "an officer in Her Majesty's naval service," was "engaged in violating the blockade;" and that there was "a strong disposition on the part of a portion of Her Majesty's navy to violate the neutrality of

* Stringer to Mason, September 16, 1863, Vol. VI, page 134.
† Mason to Stringer, September 19, 1863, Vol. VI, page 138.
‡ Vol. VI, page 140.
§ Vol. VI, page 144.
‖ Vol. VI, page 143.
¶ Bayne to Seixas, September 29, 1863, Vol. VI, page 139.
** Bayle to Lawton, November 13, 1863, Vol. VI, page 147.
†† Fraser, Trenholm, and Co., to Lawton, November 26, 1863, Vol. VI, page 149.
‡‡ Ferguson to Lawton, December 23, 1863, Vol. VI, page 149.
§§ Vol. I, page 735.
‖‖ Vol. I, page 738.

their Sovereign in aiding and assisting the enemies of the United States."* This, too, was answered in a week from its date, without taking the trouble to inquire in the West Indies.†

Wherein Great Britain failed to perform its Duties as a Neutral.

Again, upon the 25th of January, 1864, Mr. Adams called attention to "the manner in which the insurgents habitually abuse the belligerent privileges which have been conceded to them by Great Britain." It would seem that he had lately had a conversation with Earl Russell on the subject, for he says that he "deems it almost superfluous to enlarge further on the difficulties which must grow out of a toleration of the outrageous abuses of the belligerent privileges that have been granted to the insurgents."‡ "It would be difficult," he adds, "to find an example in history of a more systematic and persistent effort to violate the neutral position of a country than this one has been from its commencement, that has not brought on a war. That this has been the object of the parties engaged in it I have never for a moment doubted." "It must be obvious," he says, "to your Lordship that, after such an exposition, all British subjects engaged in these violations of blockade must incur a suspicion strong enough to make them liable to be treated as enemies, and, if taken, to be reckoned as prisoners of war."§

He sees no offence in them.

Earl Russell replied to this note on the 9th of March.‖ He ignored the evidence and charges of the hostile use of the British West India ports. He alluded to a charge against Lieutenant Rooke, which he set aside as unimportant, and to a charge against one James Ash, of a purpose to build ships for the insurgents. As to the latter charge, he reiterated the oft-repeated plea that there was no "legal and proper evidence" to sustain it; and having disposed of these, he confined himself to a notice of Mr. Adams' intimation that it might become necessary to treat blockade-runners as prisoners of war. This, he said, could not be assented to.

Earl Russell's attention again called to these facts.

A short discussion ensued, which was closed by a note of Mr. Adams, transmitting further evidence of the character of the trade between the British West Indian ports and the insurgent States, and calling Earl Russell's "particular attention to the express condition exacted from all vessels in trade with the insurgent ports, that one-half of the tonnage of each vessel may be employed by the so-called Government for its own use, both on the outward and homeward voyage;"¶ to which Earl Russell replied in an answer in which he said, in substance, that admitting all the facts stated to be true, there was nothing in them worthy of attention; for "the subjects of Her Majesty are entitled by International Law to carry on the operations of commerce equally with both belligerents, *subject to the capture of their vessels and to no other penalty.*"**

He again sees no offence in them.

This discussion closed the correspondence which took place between the two Governments on this branch of the subject. It left Great Britain justifying all that took place, after actual knowledge of much, and possible knowledge of all, had been brought within its reach. It left, too, the Queen's Proclamation as to this subject virtually revoked, and Her Majesty's subjects assured that it was no violation of international duty to break the blockade. It is worthy of remark that Lord Westbury, the Lord High Chancellor, gave a judicial decision to the same effect,†† which was soon after followed by the High Court of Admiralty.‡‡ The executive and judicial branches of the British Government were thus a second time brought into accord in construing away Her Majesty's Proclamation.

Blockade-running throve, and Nassau and Bermuda prospered under these repeated decisions of Her Majesty's Government. The "Florida," too, arrived at Bermuda on the 16th of July, 1864, and remained there until the 27th, taking coal and supplies on board; and this at a time when like permission was refused to the vessels of the United States.

Blockade-running in partnership with the insurgent Government.

It was a favourite idea of the insurgent authorities from the beginning to become interested with Englishmen as partners in blockade-running. One contract to that effect has already been alluded to.

In July 1864 McRae reported other contracts.§§ Captain Bullock, "with whom (he said) I [McRae] am directed by the Secretary of the Treasury to consult," was a party to the transaction. These contracts "made provision for fourteen steamers, four to

* Vol. I, page 739.
† Vol. I, page 740.
‡ Vol. I, page 746.
§ Adams to Russell, Vol. I, page 745.
‖ Russell to Adams, Vol. I, pp. 749–751.
¶ Adams to Russell, Vol. I, page 756.
** Russell to Adams, Vol. I, page 757.
†† 11 Jurist N. S., 400.
‡‡ Law Reports Admiralty and Ecclesiastical Courts, Browning, Vol. I, page 1.
§§ McRae to Seddon, July 4, 1864, Vol. VI, page 163.

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Blockade-running in partnership with the insurgent Government.

leave in the month of August, eight in December, and two in April, 1865."* They were to be "built of steel, and to carry 1,000 bales of cotton each, on a draught of seven feet water, and with an average speed of thirteen knots per hour."* Arrangements were at the same time made for the purchase of supplies for Huse and Ferguson pending the finishing of the vessels. The Owl was the first of these vessels to arrive. The insurgent Navy Department claimed the right "to place a naval officer in charge of her, in conformity with regulations."† The Treasury doubted this, but Mallory insisted upon his right.‡ This drew from Bullock an indignant letter, complaining that the navy had taken these vessels. Good ships were building for the navy; why take these vessels, which were not suited for naval purposes?§

On the 5th of October, 1864, orders were given for more arms, and McRae was ordered to supply Huse with 50,000 dollars for the purpose.‖ On the 26th of November Ferguson reports his doings in the purchase of woollen goods, and gives the reason for "making Liverpool his headquarters."¶ As late as the 7th of January, 1865, McRae is ordered to pay to Bullock 105,000*l.* The steamer Laurel, the same which took the arms and men to the Shenandoah, was then in Wilmington. She was sent out with a cargo of cotton, with instructions to the officer in command to sell the steamer and the cotton, and to pay Bullock 12,000*l.* out of the proceeds, putting the balance to the credit of the Treasury, with Fraser, Trenholm, and Co.** No efforts seem to have been spared to sustain the dying fortunes of the insurrection. The insurgents, at the last, fell into the unaccountable error of supposing that the British Government intended to interfere with their blockade-running. They changed the apparent ownership of the Stag into the name of John Fraser and Co., lest it should be seized as "a transport owned by the Confederate States, engaged in the blockade."†† It is needless to say that the precaution was not required. Evidence had over and over again been laid before Lord Russell that these blockade-runners were, in fact, transports of the insurgents, carrying their funds for Liverpool, and bringing back their arms and munitions of war, and that the operations of these vessels were brought clearly within the terms of the Foreign Enlistment Act; but he ever turned a deaf ear to the charges.

Continued partiality.

On the 15th of March, 1865, Mr. Adams complained of this matter for the last time. The United States' steamer San Jacinto having been wrecked on the Bahamas, and her officers and crew having found shelter at Nassau, the Honduras, also a man-of-war, was sent there for the purpose of paying in coin the claims for salvage. The Consul asked permission for the Honduras to enter the port, which was refused, although the Florida had, less than six months before, remained eleven days at Bermuda, and taken on board a full supply of coal. In bringing this breach of hospitality to the notice of Earl Russell, Mr. Adams said:—"I shall not seek to dwell on the painful impression this proceeding has made in the Naval Department of the United States, which at the same time had too much reason to be cognizant of the abuse made of that port by persons practically engaged in hostilities in violation of Her Majesty's Proclamation. There was no single day during the month in which this incident happened that thirty-five vessels, engaged in breaking the blockade, were not to be seen flaunting their contraband flags in that port. Neither has its hospitality been restricted to that hybrid class of British ships running its illegal ventures on joint account with the insurgent authorities in the United States. The Chameleon, not inaptly named, but before known as the Tallahassee, and still earlier as a British steamer fitted out from London to play the part of a privateer out of Wilmington, was lying at that very time in Nassau, relieved indeed of her guns, but still retaining all the attributes of her hostile occupation. But a few days earlier the steamer Laurel, whose history is already too well known to your Lordship by my note of the 7th instant, had reappeared after its assumption of the name of the Confederate States, and had there been not only received, but commissioned with a post mail to a port of Her Majesty's Kingdom."‡‡ Lord Russell took no notice of Mr. Adams' charge, that many of these blockade-runners were in fact transports in the insurgent service, and that the ports of Nassau and Bermuda were depots of ordnance and quartermasters' stores. His only reply, made four days after the surrender of Lee at Appomattox, was a repetition of the

* McRae to Seddon, July 4, 1864, Vol. VI, page 163.
† Mallory to Trenholm, September 21, 1864, Vol. VI, page 171.
‡ Same to same, September 22, 1864, Vol. VI, page 172.
§ Bullock to McRae, November 1, 1864, Vol. VI, page 173.
‖ Gorgas to Seddon, October 5, 1864, Vol. VI, page 172.
¶ Ferguson to Lawton, November 26, 1864, Vol. VI, page 175.
** Trenholm to Fraser, Trenholm and Co., December 24, 1864, Vol. VI, page 177.
†† Trenholm to Mallory, December 17, 1864, Vol. VI, page 176.
‡‡ Adams to Russell, Vol. I, page 709.

old story, "there is nothing in the law of nations which forbids the attempt of neutral ship-owners or commanders to evade the blockade."* To the last the British Government refused to interfere. The fears which induced the insurgents to try to cover up the ownership of the Stag were groundless. The partnership continued until the United States interfered and closed the business before the English partners could deliver the last vessels under the contract.

Wherein Great Britain failed to perform its Duties as a Neutral.
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Continued partiality

It is necessary to add a few words in regard to the closing operations of Bullock's department, before bringing this imperfect outline of Great Britain's violation of its duties as a neutral to a close.

The Rappahannock.

On the 30th of November, 1863, the London Times announced that the screw gun-vessel Victor, recently purchased from the Admiralty, has, as *has been expected*, passed into the hands of the Confederate Government."* "The Victor, an old dispatch-boat belonging to Her Majesty's Navy, was one of a number of ships ordered by the Admiratly to be sold as worn out and unserviceable. An offer for her was accepted on the 14th September, 1863, and on the 10th November the hull was delivered to the order of the purchasers, Messrs. Coleman and Co., the masts, sails, and rigging having been previously removed, as the pivots and other fittings for guns."† The steamer, instead of being taken away, remained at Sheerness, "refitting, under the direction of persons connected with the royal dock-yards."§ Many facts came to the knowledge of Mr. Adams, indicating that the vessel was intended for the insurgents. In pursuing his inquiries, however, the suspicions of the parties concerned were probably excited; for the vessel, "by no means prepared for sea, and with no adequate force to man her," was carried, with the workmen actually engaged upon her, across the English Channel and taken into Calais. Mr. Adams called Lord Russell's attention to these proceedings,‖ and furnished him with evidence tending to show the guilt of the purchasers, and also that one Rumble, inspector of machinery afloat of Her Majesty's dock-yard, Sheerness, had been the principle person concerned in enlisting the crew. Rumble was subsequently tried and acquitted, although the proof against him was clear. As to the vessel, any doubt of her character was at once removed. The insurgent flag was hoisted, and she went into commission under the name of the Rappahannock in crossing the Channel, and she entered the port of Calais claiming to be an insurgent man-of-war. What was done there is described in the statement of the Solicitor-General to the jury on the trial of Rumble. "The preparations for equipping, which had been interrupted, were proceeded with; a number of boiler-makers was sent for from England, and many of them were induced to leave their employment in the dock-yard without leave, and when they returned they were discharged as being absent without leave; attempts were made to enlist more men; a large store of coals was taken in; but at this point the French Government stepped in. The French Government not choosing their ports to be made the scene of hostile operations, interposed, and prevented any further equipment of the vessel, and, by the short and summary process of mooring a man-of-war across her bows, prevented her going out of the port, and she has been kept a prisoner in the harbour ever since."¶ Contrast again the course of the French Government with that of the British Government in like cases. What vessel bearing a commission from the Richmond authorities was ever disturbed by a British gun-boat, no matter how flagrant might have been her violations of British sovereignty?

The Shenandoah

In the summer or autumn of the year 1864, there was in London a vessel called the Sea King. She was a merchant steamer which had belonged to a Bombay company, and had been employed in the East India trade.** On the 20th of September in that year she was sold in London to Richared Wright, of Liverpool,†† the father-in-law of Prioleau, of South Carolina, the managing partner in the Liverpool house of Fraser, Trenholm, and Co.

On the 7th of October, Wright gave a power of attorney to one Corbett, an Englishman, "to sell her at any time within six months for a sum not less than 45,000*l.* sterling. On the next day she cleared for Bombay, and sailed with a large supply of coal and about fifty tons of metal and a crew of forty-seven men."‡‡ Corbett sold her to the insurgents on the high seas, or rather made the form of transfer comply with the

* Russell to Adams, Vol. I, page 714.
† Vol. II, page 725.
‡ Bernard's Neutrality of Great Britain, page 357.
§ Mr. Adams to Mr. Seward, Vol. II, page 726.
‖ Vol. II, pp. 727, 735, 738, 747, 751, 754, 771, 776, 787.
¶ Vol. VI, page 583.
** Bernard's British Neutrality, page 359.
†† Vol. III, page 319.
‡‡ Dudley to Seward, Vol. III, page 319.

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facts of the original transaction which took place in England.* On the day after the Sea King left London, the Laurel, a screw-steamer, "nearly new built, very strong, and admirably adapted for a privateer,"† left Liverpool, clearing for Matamoras viâ Nassau. She took on board "a number of cases containing guns and carriages;" and she had "twenty-one seamen, six stewards, beside deck-hands and fire-men,"‡ as first reported by the Consul at Liverpool. Further information after she left led him to write that she had taken "about one hundred men, forty or fifty of whom were on the pirate Alabama, and all Englishmen."§ The two vessels met off Madeira. On the morning of the 19th of October they went together to the barren island of Porto Santo near Madeira, and there, with eighteen hours' work, transferred to the Sea King the arms and ammunition from the Laurel, "guns, gun-carriages, shot, shell, powder, clothing, goods, &c."‖ The insurgent commander of the Sea King and about forty men came out of the Laurel and took possession of the vessel, and named her the Shenandoah; the insurgent flag was hoisted, the Laurel hoisted the English flag, and took on board some of the men of the Shenandoah, who could not be induced, even by "a bucketful of sovereigns," to aid in violating the Queen's Proclamation; and the two vessels separated.

The next appearance of the Shenandoah in a British port was at Melbourne, in January, 1865. Her character and history were well known, and were at once brought to the notice of the Governor by the Consul of the United States.¶ The evidence was so clear that the authorities evidently felt they must go through the form of arresting and examining her. This was the shell conceded to the United States. The kernel was reserved for the insurgents. The vessel was discharged, and allowed to make extensive repairs; to go upon a dry-dock; to take on board three hundred tons of coal, having at the time four hundred tons on board; and the authorities deliberately shut their eyes while she enlisted about fifty men.**

The Shenandoah, with its British crew, continued its career of destruction until long after the insurgents had abandoned the contest in America. It was not until the 19th of June, 1865, that Bullock, managing things to the last, issued his instructions to Captain Waddell to desist.†† This communication the Foreign Office undertook to forward to him.‡‡ Captain Waddell arrived with his ship in the Mersey in November, 1865, and surrendered his ship to the British Government, by whom it was handed over to the United States.

Mr. Mountague Bernard's list of vessels detained by Great Britain.

It is due to Great Britain to say that, in addition to the rams, some other vessels were detained by Her Majesty's Government. Mr. Mountague Bernard, one of Her Majesty's High Commissioners at Washington, in his able and courteous, but essentially British "Historical Account of the Neutrality of Great Britain during the American Civil War,"§§ thus recapitulates the action of the British Government in the cases which have not been hitherto noticed in this paper. From his position, it may reasonably be assumed that the list is a complete one:—

"November 18, 1862—The *Hector*. Mr. Adams' application referred to the Admiralty, November 18. This was an inquiry whether the Hector was building for Her Majesty's Government. On reference to the Admiralty it was answered in the affirmative.—January 16, 1863—The *Georgiana*. Referred to Treasury and Home Office, January 17. Ship said to be fitting at Liverpool for the Confederates. Mr. Adams could not divulge the authority on which this statement was made, Reports from the Customs, sent to Mr. Adams on the 18th, 19th, and 27th of January. tended to show that she was not designed for war. She sailed on the 21st January for Nassau, and on the 19th March was wrecked in attempting to enter Charleston Harbour.—March 26, 1863—The *Phantom* and the *Southerner*. Referred to the Treasury and the Home Office March 27, to the Law Officers of the Crown June 2. The *Phantom* was fitting at Liverpool, the *Southerner* at Stockton-on-Tees. Both proved to be intended for blockade-runners. * * *—March 18, 1864—The *Amphion*. Referred to Home Office, March 18. This vessel was said to be equipped for the Confederate service. The Law Officers reported that no case was made out. She was eventually sent to Copenhagen for sale as a merchant ship.—April 16, 1864—The *Hawk*. Referred to the Home Office, to the Lord Advocate, and the Treasury, April 18. This case has been already (April 4) reported on by the Customs, and the papers sent to the Lord Advocate. On the 13th April the ship, which was suspected of having been built

* Wilson's affidavit, Vol. III, page 326.
† Dudley to Seward, Vol. III, page 316.
‡ Dudley to Adams, Vol. III, page 317.
§ Dudley to Seward, Vol. III, page 318.
‖ Wilson's affidavit, Vol. III, page 325.
¶ Vol. III, pp. 393, 394, 396, 398.
** Vol. III, pp. 384–444.
†† Bullock to Waddell, Vol. III, page 457.
‡‡ Hammond to Mark, Vol. III, page 459.
§§ Bernard's Neutrality, page 352.

for the Confederates, left the Clyde without a register, and came to Greenhithe. The Law Officers decided that there was no evidence to warrant a seizure. She proved to be a blockade-runner. * * * —January 30, 1865—The *Virginia* and the *Louisa Ann Fanny*. Referred to Treasury, February 1. Vessels said to be in course of equipment at London. No case was established, and they proved to be blockade-runners, as reported by the Governor of the Bahamas, who had been instructed to watch their proceedings.—February 7, 1865—The *Hercules* and *Ajax*. Referred to Treasury and Home Office, February 8 and 9. Both vessels built in the Clyde. The *Ajax* first proceeded to Ireland, and was detained at Queenstown by the mutiny of some of the crew, who declared she was for the Confederate service. She was accordingly searched, but proved to be only fitted as a merchant ship. The Governor of the Bahamas was instructed to watch her at Nassau. On her arrival there she was again overhauled, but nothing suspicious discovered, and the Governor reported that she was adapted, and he believed intended, for a tug-boat. The *Hercules* being still in the Clyde, inquiries were made by the Customs Officers there, who reported that she was undoubtedly a tug-boat, and sister ship to the *Ajax*."

Wherein Great Britain failed to perform its Duties as a Neutral.

Mr. Mountague Bernard's list of vessels detained by Great Britain.

This is the whole catalogue of good works, additional to those already alluded to, which the accomplished advocate of Great Britain is able to put in as an offset to the simple story of injuries which has been told in this paper. Comment upon it is unnecessary.

The United States have now completed what they have to say in this connection of the conduct of Great Britain during the insurrection. Some of the narrative may, in its perusal, appear minute, and to refer to transactions which will be claimed on the part of Great Britain to have been conducted in conformity with some construction of International Law. These transactions are, however, historically narrated; and even those which come the nearest to a justification, as within some precedent, or some claim of neutral right, exhibit a disinclination to investigate, not to say a foregone conclusion of adverse decision. British municipal statute rather than recognized International Law was the standard of neutral duty; and the rigid rules of evidence of the English common law were applied to the complaints made in behalf of the United States, in striking contrast to the friendliness of construction, the alacrity of decision, and the ease of proof in the interest of the insurgents.

Before proceeding to relate in detail the acts of the several cruizers, which will constitute specific claims against Great Britain, the United States ask the Tribunal to pause to see what has been already established.

In a despatch from Mr. Fish to Mr. Motley, on the 25th of September, 1869, in which the Government of the United States, for the last time, recited diplomatically its grievances against Great Britain, certain statements were made which were esteemed to be of sufficient importance to be transferred to Mr. Mountague Bernard's book. Mr. Bernard was pleased to say of these statements, that a "rhetorical colour, to use an inoffensive phrase, [was] thrown over the foregoing train of assertions, which purport to be statements of fact." The United States now repeat those statements which Her Majesty's High Commissioner did them the honour to incorporate into his able work, and to comment upon, and they confidently insist that every statement therein contained has been more than made good by the evidence referred to in this paper. Those statements were as follows,* the references to the proof being inserted for the convenience of the Tribunal:—

The charges in Mr. Fish's instruction of September 25, 1869, sustained by this evidence.

"As time went on; as the insurrection from political came at length to be military; as the sectional controversy in the United States proceeded to exhibit itself in the organization of great armies and fleets, and in the prosecution of hostilities on a scale of gigantic magnitude, then it was that the spirit of the Queen's Proclamation showed itself in the event, seeing that in virtue of the Proclamation maritime enterprises in the ports of Great Britain, which would otherwise have been piratical, were rendered lawful [*see Lord Campbell's speech in the House of Lords, May* 16, 1861; *cited ante, page* 14], and thus Great Britain became, and to the end continued to be, the arsenal [*see Huse and Ferguson's letters, and Gorgas's report of Huse's purchases*], the navy yard [*see the foregoing account of Bullock's doings*], and the Treasury [*see the foregoing evidence as to Fraser, Trenholm, and Co.'s acts as depositaries*], of the insurgent Confederates.

"A spectacle was thus presented without precedent or parallel in the history of civilized nations. Great Britain, although the professed friend of the United States, yet, in time of avowed international peace, permitted [*see the decision in the Alexandra case; also the refusals to proceed against the Florida, Alabama, and the rams*] armed cruisers to be fitted out and harboured and equipped in her ports to cruise against the merchant-

* Bernard's Neutrality of Great Britain, pp. 378–380.

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ships of the United States, and to burn and destroy them, until our maritime commerce was swept from the ocean. [*See Mr. Cobden's speech in the House of Commons, May* 13, 1864.] Our merchant-vessels were destroyed piratically by captors who had no ports of their own [*see Earl Russell's speech in the House of Lords April* 26, 1864], in which to refit or to condemn prizes, and whose only nationality was the quarter-deck of their ships, built, dispatched to sea, and, not seldom in name, still professedly owned in Great Britain. [*See the evidence in regard to the transfers of the Georgia, and of the Shenandoah.*]

* * * * *

"The Queen's Ministers excused themselves by alleged defects in the municipal law of the country. [*See Earl Russell's constant pleas of want of sufficient proof to convict criminals.*] Learned Counsel either advised that the wrongs committed did not constitute violations of the municipal law, or else give sanction to artful devices of deceit, to cover such violations of law. [*See the decision as to the Florida; as to the Alabama until she was ready to sail; as to the rams; and as to the operations at Nassau, Bermuda, and Liverpool.*] And, strange to say, the Courts of England or of Scotland, up to the very highest, were occupied month after month with juridical niceties and technicalities of statute construction in this respect [*see the Alexandra case*], while the Queen's Government itself, including the omnipotent Parliament, which might have settled these questions in an hour by appropriate legislation, sat with folded arms, as if unmindful of its international obligations, and suffered ship after ship to be constructed in its ports to wage war on the United States. [*See the decision of the Cabinet, communicated to Mr. Adams, February* 13, 1863, *and Lord Palmerston' speech in the House of Commons, March* 27, 1863.]

* * * * * *

"When the defects of the existing laws of Parliament had become apparent, the Government of the United States earnestly entreated the Queen's Ministers to provide the required remedy, as it would have been easy to do, by a proper Act of Parliament; but this the Queen's Government refused. [*See the account of Lord Russell's interview with Mr. Adams, February* 13, 1863.]

* * * * * *

"On the present occasion, the Queen's Ministers seem to have committed the error of assuming that they needed not to look beyond their own local law, enacted for their own domestic convenience, and might, under cover of the deficiencies of that law, disregard their sovereign duties toward another sovereign Power. Nor was it, in our judgment, any adequate excuse for the Queen's Ministers to profess extreme tenderness of private rights, or apprehension of actions for damages, in case of any attempt to arrest the many ships which, either in England or Scotland, were, with ostentatious publicity, being constructed to cruise against the United States. [*See the evidence as to the Florida, the Georgia, the Alabama, the rams, the Bermuda, the Tallahassee, the Pampero, the Rappahannock, the Laurel, and other vessels.*]

* * * * * *

"But although such acts of violation of law were frequent in Great Britain, and susceptible of complete technical proof, notorious, flaunted directly in the face of the world, varnished over, if at all, with the shallowest pretexts of deception, yet no efficient step appears to have been taken by the British Government to enforce the execution of its municipal laws, or to vindicate the majesty of its outraged sovereign power. [*The Alabama, the Florida, the Georgia, and the Shenandoah escaped. The rams were seized, but never condemned; no guilty party was ever punished; Bullock and Prioleau were never interfered with.*]

"And the Government of the United States cannot believe—it would conceive itself wanting in respect for Great Britain to impute—that the Queen's Ministers are so much hampered by juridical difficulties that the local administration is thus reduced to such a state of legal impotency as to deprive the Government of capacity to uphold its sovereignty against local wrong-doers, or its neutrality as regards other Sovereign Powers. [*Contrast with this the course of the British Government and Parliament during the Franco-German war.*]

"If, indeed, it were so, the causes of reclamation on the the part of the United States would only be the more positive and sure, for the law of nations assumes that each Government is capable of discharging its international obligations; and, perchance, if it be not, then the absence of such capability is itself a specific ground of responsibility for consequences. [*This statement probably will not be denied.*]

"But the Queen's Government would not be content to admit, nor will the Government of the United States presume to impute to it, such political organization

The charges in Mr. Fish's instruction of September 25, 1869, sustained by this evidence.

of the British Empire as to imply any want of legal ability on its part to discharge, in the amplest manner, all its duties of sovereignty and amity toward other Powers.

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"It remains only in this relation to refer to one other point, namely, the question of *negligence;* neglect on the part of officers of the British Government, whether superior or subordinate, to detain Confederate cruisers, and especially the Alabama, the most successful of the depredators on the commerce of the United States.

The charges in Mr. Fish's instruction of September, 25, 1869, sustained by this evidence.

"On this point the President conceives that little needs now to be said, for various cogent reasons:

"First, the matter has been exhaustively discussed already by this Department, or by the successive American Ministers.

"Then, if the question of negligence be discussed with frankness, it must be treated in this instance as a case of extreme negligence, which Sir William Jones has taught us to regard as equivalent or approximate to evil intention. The question of negligence, therefore, cannot be presented without danger of thought or language disrespectful toward the Queen's Ministers; and the President, while proposing, of course, as his sense of duty requires, to sustain the rights of the United States in all their utmost amplitude, yet intends to speak and act in relation to Great Britain in the same spirit of international respect which he expects of her in relation to the United States, and he is sincerely desirous that all discussions between the Governments may be so conducted as not only to prevent any aggravation of existing differences, but to tend to such reasonable and amicable determination as best becomes two great nations of common origin and conscious dignity and strength.

"I assume, therefore, pretermitting detailed discussion in this respect, that the negligence of the officers of the British Government in the matter of the Alabama, at least, was gross and inexcusable, and such as indisputably to devolve on that Government full responsibility for all the depredations committed by her. Indeed, this conclusion seems in effect to be conceded in Great Britain. [*See the preface to Earl Russell's Speeches and Despatches.*] At all events, the United States conceive that the proofs of responsible negligence in this matter are so clear that no room remains for debate on that point, and it should be taken for granted in all future negotiations with Great Britain."

PART V.

Insurgent Cruisers: General Review.

WHEREIN GREAT BRITAIN FAILED TO PERFORM ITS DUTIES AS A NEUTRAL.—THE INSURGENT CRUISERS.

"In the first place, I am sorry to observe that the unwarrantable practice of building ships in this country, to be used as vessels of war against a State with which Her Majesty is at peace, still continues. Her Majesty's Government had hoped that this attempt to make the territorial waters of Great Britain the place of preparation for warlike armaments against the United States might be put an end to by prosecutions and by seizure of the vessels built in pursuance of contracts made with the Confederate Agents. But facts which are unhappily too notorious, and correspondence which has been put into the hands of Her Majesty's Government by the Minister of the Government of the United States, show that resort is had to evasion and subtlety in order to escape the penalties of the law; that a vessel is bought in one place, that her armament is prepared in another, and that both are sent to some distant port beyond Her Majesty's jurisdiction, and that thus an armed steamship is fitted out to cruise against the commerce of a Power in amity with Her Majesty. A crew, composed partly of British subjects, is procured separately; wages are paid to them for an unknown service. They are dispatched, perhaps, to the coast of France, and there or elsewhere are engaged to serve in a Confederate man-of-war.

Now, it is very possible that, by such shifts and stratagems, the penalties of the existing law of this country, nay, of any law that could be enacted, may be evaded; but the offence thus offered to Her Majesty's authority and dignity by the *de facto* rulers of the Confederate States, whom Her Majesty acknowledges as belligerents, and whose agents in the United Kingdom enjoy the benefit of our hospitality in quiet security, remains the same. It is a proceedingly totally unjustifiable, and manifestly offensive to the British Crown."—*Earl Russell's Letter to Messrs. Mason, Slidell, and Mann, February* 13, 1865. *Vol. I, page* 630.

Earl Russell denounces the acts of which the United States complain as unwarranted and totally unjustifiable.

THE Tribunal of Arbitration will probably agree with Earl Russell in his statement to the insurgent agents, that "the practice of building ships" in Great Britain "to be used as vessels of war" against the United States, and the attempts to make the territorial waters of Great Britain the place of preparation for warlike armaments against the United States" "in pursuance of contracts made with the Confederate agents" were "unwarrantable" and "totally unjustifiable."

British territory the base of the naval operations of the insurgents.

British territory was, during the whole struggle, the base of the naval preparations of the insurgents. The first serious fight had scarcely taken place before the contracts were made in Great Britain for the "Alabama" and the "Florida." The contest was nearly over when Waddell received his orders in Liverpool to sail thence in the "Laurel" in order to take command of the "Shenandoah" and to visit the Arctic Ocean on a hostile cruise.*

Their arsenal.

There also was the arsenal of the insurgents, from whence they drew their munitions of war, their arms, and their supplies. It is true that it has been said, and may again be said, that it was no infraction of the law of nations to furnish such supplies. But, while it is not maintained that belligerents may infringe upon the rights which neutrals have to manufacture and deal in such military supplies in the ordinary course of commerce, it is asserted with confidence that a neutral ought not to permit a belligerent to use the neutral soil as the main, if not the only base of its military supplies, during a long and bloody contest, as the soil of Great Britain was used by the insurgents.

The systematic operations of the insurgents a violation of the duties of a neutral.

It may not always be easy to determine what is and what is not lawful commerce in arms and munitions of war; but the United States conceive that there can be no doubt on which side of the line to place the insurgent operations on British territory. If Huse had been removed from Liverpool, Heyliger from Nassau, and Walker from Bermuda; or if Fraser, Trenholm, and Co. had ceased to sell insurgent cotton and to convert it into money for the use of Huse, Heyliger, and Walker, the armies of the insurgents must have succumbed. The systematic operations of these persons, carried on openly and under the avowed protection of the British Government, made of British territory the "arsenal" of which Mr. Fish complained in his note of September 25, 1869.† Such conduct was, to say the least, wanting in the essentials of good

* Vol. III, page 461.

† Vol. VI, page 4.

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neighbourhood, and should be frowned upon by all who desire to so establish the principles of International Law, as to secure the peace of the world, while protecting the independence of nations.

The systematic operations of the insurgents a violation of the duties of a neutral.

It is in vain to say that both parties could have done the same thing. The United States were under no such necessity. If they could not manufacture at home all the supplies they needed, they were enabled to make their purchases abroad openly, and to transport them in the ordinary course of commerce. It was the insurgents who, unable to manufacture at home, were driven to England for their entire military supplies, and who, finding it impossible to transport those supplies in the ordinary course of commerce, originated a commerce for the purpose, and covered it under the British flag to Bermuda and Nassau. Under the pressure of the naval power of the United States, their necessities compelled them to transport to England a part of the Executive of their Government, and to carry on its operation in Great Britain. They were protected in doing this by Her Majesty's Government, although its attention was called to the injustice thereof.* This conduct deprived the United States of the benefit of their superiority at sea, and to that extent British neutrality was partial and insincere. The United States confidently submit to the Tribunal of Arbitration that it is an abuse of a sound principle to extend to such combined transactions as those of Huse, Heyliger, Walker, and Fraser, Trenholm, and Co., the well-settled right of a neutral to manufacture and sell to either belligerent, during a war, arms, munitions, and military supplies. To sanction such an extension will be to lay the foundation for international misunderstanding and probable war, whenever a weaker party hereafter may draw upon the resources of a strong neutral, in its efforts to make its strength equal to that of its antagonist.

Continuing partiality for the insurgents.

From the Queen's Proclamation of neutrality to the close of the struggle, Great Britain framed its rules, construed its laws and its instructions, and governed its conduct in the interests of the insurgents. What could tend more to inspirit them than the news that on the eve of Mr. Adams' arrival in London, as if to show in the most public manner a purpose to overlook him, and to disregard the views which he might have been instructed by his Government to present, it had been determined to recognize their right to display on the ocean a flag which had not then a ship to carry it? How they must have welcomed the parliamentary news,† on the heels of this Proclamation, that the effect of this recognition would be to employ British subjects in warring upon the commerce of the United States, with a protection against piracy promised in advance! How great must have been their joy when they found British laws construed so as to confer upon them the right to use the workshops and dockyards of Liverpool for building ships which, without violating the municipal law of England, might leave British ports in such a warlike state that they could be fitted for battle in twenty-four hours! How they must have been cheered by the official legalization of the operations of those who had been sent to Liverpool in anticipation of the Proclamation, to be in readiness to act! And if these welcome sights inspirited and cheered the insurgents, as was doubtless the case, how relatively depressing must have been their effect upon the loyal people and upon the Government of the United States! The correspondence of Mr. Seward and of Mr. Adams, running through the whole of the volumes of evidence accompanying this case, bears testimony to the depth of this feeling.

Recapitulation of hostile acts tolerated in British possessions.

When Great Britain carried into practice its theory of neutrality, it was equally insincere and partial.

Its municipal laws for enforcing its obligations as a neutral, under the law of nations, were confessedly inadequate, and, during the struggle, were stripped of all their force by executive and judicial construction. Yet Great Britain refused to take any steps for their amendment, although requested so to do.‡

The Queen's Proclamation inhibited blockade-running; yet the authorities encouraged it by enacting new laws or making new regulations which permitted the transhipment of goods contraband of war within the colonial ports; by officially informing the colonial officers that "British authorities ought not to take any steps adverse to merchant vessels of the Confederate States, or to interfere with their free resort to British ports;"§ by giving official notice to the United States that it would not do to examine too closely, on the high seas, British vessels with contraband of war;‖

* Lord Russell to Mr. Adams, Vol. I, page 578.
† Vol. V. pp. 486–491.
‡ *Ante*, page 68.
§ Duke of Newcastle to Governor Ord, Vol. II, page 558.
‖ Earl Russell to Lord Lyons, Vol. II, page 591.

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Recapitulation of hostile acts tolerated in British possessions.

and by regulations which operated to deter the United States vessels of war from entering the British ports from which this illicit trade was carried on.

The Foreign Enlistment Act of 1819 forbade the employment of a British vessel as a transport; and yet vessels known to be owned by the insurgent authorities, and engaged in carrying munitions of war for them, were allowed to carry the British flag and were welcomed in British ports. Still further, the same vessel would appear one day as a blockade-runner, and another day as a man-of-war, receiving an equal welcome in each capacity.

The instructions of January 31, 1862, forbade both belligerents alike to enter the port of Nassau except by permission of the Governor, or in stress of weather. That permission was lavishly given to every insurgent cruiser, but was granted churlishly, if at all, to the vessels of the United States.

The same instructions forbade the granting to a steam man-of-war of either belligerent in British ports a supply of coal in excess of what would be necessary to take the vessel to the nearest port of its own country or some nearer destination. This rule was enforced upon the vessels of the United States, but was utterly disregarded as to the vessels of the insurgents.

Those instructions also forbade the granting of any supply of coal to such a vessel if it had been coaled in a British port within three months. Yet in three notable instances this salutary rule was violated, that of the Nashville at Bermuda in February, 1862; the Florida at Barbados, in February, 1863; and the Alabama at Cape Town in March 1864.

These facts throw suspicion upon the acts of British officials toward insurgent cruisers.

These admitted facts were repeatedly, and in detail, brought to the notice of the British Government, and as repeatedly, the answer was given that there was no cause for interference. At length there were, as a system, brought to Lord's Russell's attention, by Mr. Adams, with the threads of evidence, which furnished him with the proof of their truth. Yet he declined to act, saying that "this correspondence does not appear to Her Majesty's Government to contain any sufficient evidence of a system of action in direct hostility to the United States;" that it furnished no proof as to the building of iron-clads that "could form matter for a criminal prosecution; and that the other acts complained of were "not contrary to law."* In other words, he declared that the only international offence of which Her Majesty's Government would take notice was the building of iron-clads; and that no steps would be taken, even against persons guilty of that violation of neutrality, until the officials of the United States would act the part of detectives, and secure the proof which a British court could hold competent to convict the offender of a violation of a local law. It is important, in considering the evidence which is about to be referred to, to bear in mind these constant demonstrations of partiality for the insurgents. They show a persistent absence of real neutrality, which, to say the least, should throw suspicion upon the acts of the British officials as to those vessels, and should incline the Tribunal to closely scrutinize their conduct.

They show an abnegation of all diligence to prevent the acts complained of.

The United States, however, go farther than this. They insist that Her Majesty's Government abandoned, in advance, the exercise of that due diligence which the Treaty of Washington declares that a neutral is bound to observe. They say that the position of Her Majesty's Government just cited, taken in connection with the construction put upon the Foreign Enlistment Act by the British courts in the Alexandra case, was a practical abandonment of all obligation to observe diligence in preventing the use of British territory by the insurgents, for purposes hostile to the United States. They aver that it was a notice to them that no complaints in this respect would be listened to, which were not accompanied by proof sufficient to convict the offender as a criminal under the Foreign Enlistment Act. To furnish such proof was simply impossible. The Tribunal will remember that it was judicially said in the case of the Alexandra, that what had been done in the matter of the Alabama was no violation of British law, and therefore constituted no offence to be punished. Well might Earl Russell say that the Oreto and the Alabama were a scandal to English laws.

They throw upon Great Britain the burden of proof to show that the acts complained of could not have been prevented.

The United States with great confidence assert that the facts which have been established justify them in asking the Tribunal of Arbitration, in the investigations now about to be made, to assume that, in the violations of neutrality which will be shown to have taken place, the burden of proof will be upon Great Britain to establish that they could not have been prevented. Her Majesty's Government declined to investigate charges and to examine evidence submitted by Mr. Adams as to repeated violations of British territory, which subsequent events show were true in every respect. It placed its refusal upon principles which must inevitably lead to like disregard in

* Earl Russell to Mr. Adams, Vol. I, page 578.

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future—principles which rendered nugatory thereafter any measure of diligence to discover violations of neutrality within Her Majesty's dominions. Thereby Great Britain assumed and justified all similar acts which had been or might be committed, and relieved the United States from the necessity of showing that due diligence was not exercised to prevent them.

They throw upon Great Britain the burden of proof to show that the acts complained of could not have been prevented.

Of what use was it to exercise diligence to show the purpose for which the Florida, the Alabama, or the Georgia was constructed, or the Shenandoah was purchased, if the constructing, fitting out, or equipping, or the purchase for such objects was lawful, and could not be interfered with? What diligence could have prevented the excessive supplies of coal and other hospitalities to the insurgent cruisers, or the protection of transports, all of which made those ports bases of operations, if such acts were no violation of the duties of a neutral, of which the United States might justly complain?

List of the insurgent cruisers.

The cruisers for whose acts the United States ask this Tribunal to hold Great Britain responsible are (stating them in the order in which their cruises began) the Sumter; the Nashville; the Florida and her tenders, the Clarence, the Tacony, and the Archer; the Alabama and her tender, the Tuscaloosa; the Retribution; the Georgia; the Tallahassee; the Chicamauga; and the Shenandoah. The attention of the Tribunal of Arbitration is now invited to an account of each of these vessels.

The Sumter.

The Sumter.

The Sumter escaped from the passes of the Mississippi on the 30th of June, 1861, and on the 30th of the following July arrived at the British port of Trinidad. She remained there six days, taking in a supply of coal.* Complaint being made of this act as a "violation of Her Majesty's Proclamation of Neutrality,"† Lord Russell replied, that "the conduct of the Governor was in conformity to Her Majesty's Proclamation;" that "Captain Hillyar, of Her Majesty's Ship Cadmus, having sent a boat to ascertain her nationality, the commanding officer showed a commission signed by Mr. Jefferson Davis, calling himself the President of the so-styled Confederate States."‡ Her Majesty's Government thus held this vessel to be a man-of-war as early as the 30th of July, 1861.

Having got a full supply of coal and other necessary outfit, the Sumter sailed on the 5th of August, 1861, and, after a cruize in which she destroyed six vessels carrying the flag of the United States, she arrived in Gibraltar on the 18th of the following January. Before she could again be supplied with coal and leave that port, she was shut in by the arrival of the Tuscarora, a vessel of war of the United States, which "anchored off Algeciras."§ The Tuscarora was soon followed by the Kearsarge, both under the instructions of the Government of the United States.

Finding it impossible to escape, an attempt was made to sell the Sumter, with her armament, for 4,000*l.*‖ The Consul of the United States at Gibraltar, by direction of Mr. Adams, protested against this sale.¶ The sale was finally made "by public auction" on the 19th of December, 1862.** Mr. Adams notified Earl Russell that the sale would not be recognized by the United States, and called upon Great Britain not to regard it, as it had been made in violation of principles of law that had been adopted by British courts and publicists.†† He maintained that "Her Majesty's Government, in furnishing shelter for so long a period to the Sumter in the harbour of Gibraltar, as a ship of war of a belligerent, had determined the character of the vessel;"‡‡ and that "the purchase of ships of war belonging to enemies is held in the British courts to be invalid."††

After reflecting upon this simple proposition for mor than five weeks, Earl Russell denied it. He said. "The British Government, when neutral, is not bound to refuse to a British subject the right to acquire by purchase a vessel which a beligerent owner may desire to part with, but it would not deny the right of the adverse belligerent to ascertain, if such vessel were captured by its cruizers, whether the vessel had rightfully, according to the law of nations, come into the possession of the neutral."§§ Mr. Adams also maintained that the sale was fictitious,‖‖ to which Earl Russell replied that he "could not assume that the Sumter had not been legally and *bonâ fide* sold to a British owner for commercial and peaceful purposes."¶¶ Mr. Adams insisted (and the

* Bernard to Seward, Vol. II, page 485.
† Adams to Russell, Vol. II, page 484.
‡ Russell to Adams, Vol. II, page 486.
§ Sprague to Seward, Vol. II, page 502.
‖ Sprague to Adams, Vol. II, page 507.
¶ Sprague to Codrington, Vol. II, page 509.
** Sprague to Adams, Vol. II, page 515.
†† Adams to Russell, Vol. II, page 522.
‡‡ Adams to Russell, Vol. II, page 523.
§§ Russell to Adams, Vol. II, page 526.
‖‖ Adams to Russell, Vol. II, page 520.
¶¶ Russell to Adams, Vol. II, page 521.

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result proved that he was correct) that the sale of the Sumter was fictitious, and that the purchaser was an agent of Fraser, Trenholm, and Co., the Treasury agents and depositaries, &c., for the insurgent authorities at Richmond.* His representations were disregarded, and the vessel was taken to Liverpool and thoroughly repaired. She then took on board a cargo of arms and munitions of war, and under the name of the Gibraltar, fortified with a British register, became an insurgent transport.†

In all these proceedings on the part of British officials the United States find a partiality toward the insurgents, which is inconsistent with the duties of a neutral:

1. The Sumter was permitted to receive at Trinidad a full supply of coal. The United States, however, were forbidden by Great Britain even to deposit coal in the British West Indies for their own use, under such regulations as might be prescribed by Her Majesty's Government. What took place at Nassau in December 1861 has already been told. In Bermuda, on the 19th of February, 1862, their Consul was officially informed that "the Government of Her Britannic Majesty had determined not to allow the formation in any British colony of a coal-depôt for the use of their vessels of war, either by the Government of the United States or of the so-styled Confederate States."‡ Before this Case is finished it will be seen how thoroughly this determination was disregarded as to the "so-styled Confederate States."

If it should be thought that the habitually insincere neutrality of Great Britain, as already detailed, did not constitute such a violation of the duties of a neutral as would entail responsibility for the acts of all the insurgent cruizers (which the United States, with confidence, maintain that it did), it is clear that the Sumter was furnished with an excessive supply of coal at Trinidad, which supply enabled her to inflict the subsequent injuries on the commerce of the United States. It is not contended that at that time there were any precedents which settled absolutely the quantity of coal which might be furnished to a belligerent steam man-of-war by a neutral. When the Proclamation of Neutrality was issued, it seemed to be the opinion of leading members of the House of Lords (Lords Brougham and Kingsdown for instance), that coal for the use of vessels of war might be regarded as contraband of war.§ The instructions issued by Her Majesty's Government a few months later permitted this article to be furnished, provided the supply should be measured by the capacity of the vessel to consume it, and should be limited to what might be necessary to take it to the nearest port of its own country, or to some nearer destination. This rule, as subsequently modified by the United States,‖ appears to be a just medium between the excessive supply furnished to the Sumter in Trinidad, and the absolute refusal to permit the United States to supply itself. Under this rule the Sumter would have been entitled to receive only what would be necessary to take her to New Orleans or to Galveston.

2. The Sumter was in the port of Gibraltar when the instructions of January 16, 1862 (Vol. IV, p. 175), were published there,¶ on the 11th February. By their terms they were to go into effect six days after that date. Under those instructions the Sumter, having been recognized as a man-of-war, ought to have been required to leave the port of Gibraltar within twenty-four hours, or, if without coal, within twenty-four hours after getting a supply of coal. Instead of that she was allowed to remain there for twelve months, while Lord Russell's instructions were rigidly enforced against the vessels of the United States. The reason for this partiality may be easily gathered from the correspondence of the United States' Consul at Gibraltar.** The vessels of war of the United States were on her track, and had the instructions of Earl Russell been complied with, the well-laid schemes of the United States' officers for her destruction would have been successful. But the Tribunal will observe that the instructions, which were so offensively enforced against the United States' vessels Connecticut and Honduras, were ignored as to the insurgent vessel Sumter.

* The nominal purchasers were M. G. Klingender and Co, (Vol. II, page 529.) This house was connected with Fraser, Trenholm, and Co., and paid regularly a portion of the wages of the men on the Alabama to their families in Liverpool. (See Dudley to Adams, Vol. III, page 210.)

† Vol. II, pp. 521–538.

‡ Ord to Allen, Vol. II, page 590. See also the reports of the officers of the Keystone and the Quaker City, who, in December 1861, were refused supplies of coal at this port, Vol. VI, pp. 52 and 53. See also the case of the Florida, *post*, where this subject is more fully discussed.

§ Vol. IV, pp. 486–491.

‖ The President's Proclamation of October 8, 1870, issued during the Franco-German war, limited the supply of coal to the war vessels or privateers of the belligerents to so much as might be sufficient, if without sail power, to carry the vessel to the nearest European port of its own country; if with sail power, to half that quantity.

¶ Vol. II, pp. 502–503.

** Sprague to Adams, Vol. II, pp. 502, 503, 506, 507.

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3. The sale of the Sumter was palpably an evasion. She went into the hands of Fraser, Trenholm, and Co.; and knowing the connection between that firm and the insurgents, it is not too much to ask the Tribunal to assume as a probability that there was never any change of ownership. But if it should be thought that the transaction was *bonâ fide*, then there is an equal probability that the money found its way to the credit of the insurgents in their Liverpool transactions.

By reason of these repeated acts of insincere neutrality, or of actual disregard of the duties of a neutral, the United States were great sufferers. Before arriving at Trinidad, the Sumter captured eleven American vessels.* After leaving that port, and before arriving at Gibraltar, she captured six other vessels belonging to citizens of the United States. The injury did not stop there. The United States made diligent efforts to capture this vessel which was destroying their commerce. For this purpose they dispatched across the Atlantic two of their men-of-war, the Kearsarge and the Tuscarora. These vessels followed on the track of the Sumter, and the plans of the United States would have been successful had Earl Russell's instructions of January 31, 1862, been carried out toward the Sumter in the port of Gibraltar, as they were carried out toward the vessels of the United States in all the Colonial ports of Great Britain.

Under these circumstances. the United States ask the Tribunal to find and certify as to the Sumter that Great Britain, by the acts or omissions hereinbefore recited or referred to, failed to fulfil the the duties set forth in the three rules in Article VI of the Treaty of Washington, or recognized by the principles of International Law not inconsistent with such rules. Should the Tribunal exercise the power conferred upon it by Article VII of the Treaty, to award a sum in gross to be paid to the United States, they will ask that, in considering the amount so to be awarded, the losses of individuals in the destruction of their vessels and cargoes by the Sumter, and also the expenses to which the United States were put in the pursuit of that vessel, may be taken into account.

The Nashville.

The Nashville. The Nashville, a large paddle-wheel steamer, formerly engaged on the New York and Charleston line, lightened to diminish her draught, armed with two guns, and commanded by an officer who had been in the Navy of the United States, ran out from Charleston on the night of the 26th of October, 1861.† She arrived at the British port of St. George, Bermuda, on the afternoon of the 30th‡ of the same month, having been about three and a half days making the passage. She took on board there, by the permission of the Governor, six hundred tons of coal,§ and this act was approved by Her Majesty's Principal Secretary of State for the Colonies.‖ This approval seems to have been elicited by the complaints which had been made to the Governor by the Consul of the United States at that port.¶ It may also be that Her Majesty's Government preferred to have the question settled, before it could be made the subject of diplomatic representation on the part of the United States.

In view of the rule as to supplies of coal which was soon after adopted by Her Majesty's Government, the United States insist, as they have already insisted in regard to the Sumter, that a supply of six hundred tons was greatly in excess of the needs of the Nashville. There are no means of knowing whether she had any coal on board at the time she arrived in the port of St. George. Assuming that she had none, the utmost she should have received was enough to take her back to Charleston, from which port she had just come in three days and a-half. Instead of that, she received more than a supply for a voyage to Southampton. She left Bermuda on the afternoon of the 5th of November,** and anchored in Southampton Water on the morning of the 21st of the same month,†† having destroyed at sea the United States' merchant-ship Harvey Birch‡‡ on the passage.

A correspondence ensued between Earl Russell and Mr. Adams as to the character of this vessel, in which Lord Russell said, "The Nashville appears to be a Confederate vessel of war."§§ She was received as such, was "taken into dock for caulking and other

* Bernard to Seward, Vol. II, page 485.
† Bernard's Neutrality of Great Britain, page 267.
‡ Wells to Seward, Vol. II, page 538.
§ Governor Ord to the Duke of Newcastle, Vol. II, page 557.
‖ Duke of Newcastle to Governor Ord, Vol. II, page 558.
¶ Wells to Ord, Vol. II, page 539.
** Wells to Seward, Vol. II, page 540.
†† Captain Patey to the Secretary of the Admiralty, Vol. II, pp, 543–544.
‡‡ Russell to Adams, Vol. II, page 555.
§§ Vol. II, page 587.

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repairs," and "received one hundred and fifty tons of coal" on the 10th of January. On the 25th "Captain Patey, of Her Majesty's Navy, reported the Nashville coaled and necessary repairs completed."*

On the 4th of the following February the Nashville left Southampton and proceeded to Bermuda, where she arrived on the evening of the 20th. On the day previous to that (the 19th) the Consul had received from the Governor the official notice already alluded to, that the Government of Her Britannic Majesty had determined not to allow the formation, in any British Colony, of a coal depôt for the use of the vessels of war of the United States.† The Government of the United States was therefore, not a little astonished to learn from the Consul at Bermuda that the Nashville had taken on board one hundred and fifty tons of coal at that place, and that she left "under the escort of Her Majesty's steamer Spiteful."‡

These circumstances, in accordance with the principles hereinbefore stated, justify the United States in asking the Tribunal of Arbitration as to this vessel, to find and certify that Great Britain, by the acts or omissions hereinbefore recited or referred to, failed to fulfil the duties set forth in the three rules in Article VI of the Treaty of Washington or recognized by the principles of international law not inconsistent with such rules. Should the Tribunal exercise the power conferred upon it by Article VII of the Treaty, to award a sum in gross to be paid to the United States, they will ask that, in considering the amount so to be awarded, the losses of individuals in the destruction of their vessels and cargoes by the Nashville, and also the expenses to which the United States were put in the pursuit of that vessel, may be taken into account.

The Florida and her Tenders, The Clarence, The Tacony, and The Archer.

The Florida and her tenders.

The Florida, originally known as the Oreto, was an iron screw gun-boat, of about seven hundred tons burden, bark-rigged, and had two smoke-stacks and three masts.§ The contract for her construction was made with Fawcett, Preston, and Co., of Liverpool, by Bullock, soon after he came to England in the summer of 1861. He was introduced to them by Prioleau, of the firm of Fraser, Trenholm, and Co., in order that he might make the contract."‖

It was pretended, for form's sake, that she was constructed for the Italian Government; but it was a shallow pretence, and deceived only those who wished to be deceived. The Italian Consul at Liverpool disclaimed all knowledge of her,¶ and people at that port who were familiar with ship-building understood from the first that she was being built for the Southern insurgents.**

The precise date of the making of the contract cannot be given by the United States. The range of time within which it must have been made can be determined. Bullock left England in the autumn of 1861, at or about the time that the Bermuda sailed with Huse's first shipment of stores; and returned in March, on the Annie Childs, which ran the blockade from Wilmington.††. The contract was made before he left, and the Florida was constructed during his absence.

The contract for the construction of the hull was sub-let by Fawcett, Preston, and Co. to Miller and Sons of Liverpool.‡‡ The payments to Miller and Sons were made by Fawcett, Preston, and Co.; the payments to Fawcett, Preston, and Co. were made by Fraser, Trenholm, and Co.

By the 4th of February the Florida was taking in her coal, and appearances indicated that she would soon leave without her armament.§§ She made her trial trip on the 17th of February. By the 1st of March she had taken in her provisions, "a very large quantity, enough for a long cruise," and was "getting as many Southern sailors"‖‖ as possible. She was registered as an English vessel.¶¶ Although apparently

* Ord to Allen, Vol. II, page 590.
† Adams to Seward, Vol. II, page 542.
‡ Allen to Seward, Vol. II, page 591.
§ Dudley to Adams, Vol. II, page 594.
‖ Prioleau's evidence, Vol. VI, page 181.
¶ Dudley to Seward, Vol. II, page 592.
** See Mr. Dudley's dispatches of January 24 and 31, and of February 4, 12, 17, 19, 21, 22, 26, and 27, and of March 1, 5, 12, 15, 19, and 22, in the year 1862, Vol. VI, page 214 *et seq.*
†† Dudley to Seward, March 12, 1862, Vol. VI, page 223.
‡‡ Same to same, February 12, 1862, Vol. VI, page 215
§§ Dudley to Seward, Vol. II, page 592; Vol. VI, page 215.
‖‖ Same to same, Vol. II, page 596; Vol. VI, page 220.
¶¶ Same to same, Vol. II, page 597; Vol. VI, page 221.

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ready to sail, she lingered about Liverpool, which gave rise to some speculations in the minds of the people of that town. It was said that she had "injured herself and was undergoing repairs."* The mystery was solved by the arrival, on the 11th of March, in the Mersey, of the Annie Childs from Wilmington, bringing as passengers Captain Bullock‡ and four other insurgent naval officers, who came on board of her "some twenty miles down the river from Wilmington,"† and who were to take commands on the vessels which were contracted for in Liverpool. As soon as they arrived they went on board the Florida, and were entertained there that evening.‡ On the 22nd of March the Florida took her final departure from the Mersey,§ with "a crew of fifty-two men, all British, with the exception of three or four, one of whom only was an American."‖ She was consigned by Bullock to Heyliger. Another account says that she was consigned to Adderley and Co.

Simultaneously with these proceedings, shipments were being made at Hartlepool, on the eastern coast of England, of cannon, rifles, shot, shells, &c., intended for the Florida. They were sent from Liverpool to Hartlepool by rail, and there put on board the steamer Bahama for Nassau.

It was a matter of public notoriety that this was going on.¶ All the facts about the Florida, and about the hostile expedition which it was proposed to make against the United States, were open and notorious at Liverpool. Mr. Dudley's correspondence, already cited, was full of it. The means of intelligence were as accessible to British authorities as to the consular officers of the United States. Nevertheless, it was esteemed to be the duty of the officers of the United States to lay what had come to their knowledge before Her Majesty's Government. Mr. Dudley, the Consul at Liverpool, wrote to Mr. Adams that he had information from many different sources as to the Oreto, "all of which goes to show that she is intended for the Southern Confederacy."** Mr. Adams transmitted the intelligence to Earl Russell, and said that he "entertained little doubt that the intention was precisely that indicated in the letter of the Consul, the carrying on war against the United States." * * * He added, "Should further evidence to sustain the allegations respecting the Oreto be held necessary to effect the object of securing the interposition of Her Majesty's Government, I will make an effort to procure it in a more formal manner."††

The United States ask the Tribunal to observe that, notwithstanding this offer, *no objection was taken as to the form of the information submitted by Mr. Adams, nor was he asked by Earl Russell for further particulars.* Lord Russell, however, in reply, transmitted to Mr. Adams a report of the British Commissioners of Customs, in which it was stated that the Oreto was a vessel of war "pierced for four guns;" that she was "built by Miller and Sons for Fawcett, Preston, and Co.," and was "intended for the use of Messrs. Thomas Brothers, of Palermo;" that she "had been handed over to Messrs. Fawcett and Preston; that Miller and Son stated their belief that the destination was Palermo;" and that "the examiners had every reason to believe that the vessel was destined for the Italian Government."‡‡ Further representations being made by Mr. Adams, the same officers subsequently reported that, having received directions "to inquire into the further allegations made in regard to the Oreto," they found "that the vessel in question was registered on the 3rd of March in the name of John Henry Thomas, of Liverpool, as sole owner; that she cleared on the following day for Palermo and Jamaica, in ballast, but did not sail until the 22nd * * * having a crew of fifty-two men, all British, with the exception of three or four, one of whom only was an American."§§

The Tribunal of Arbitration will observe that even from the reports of these British officers it is established that the Florida was a vessel of war, "pierced for four guns;" and also that notwithstanding their alleged belief that she was intended for the King of Italy, she was allowed to clear for Jamaica in ballast. Attention is also invited to the easy credulity of these officials, who, to the first charges of Mr. Adams, replied by putting forward the "belief" of the builders as to the destination of the vessel, and who met his subsequent complaints by extracting from the Custom-house records the false clearance which Bullock, and Fraser, Trenholm, and Co., had caused to

* Dudley to Seward, March 7, 1862, Vol. VI, page 222.
† Same to same, March 22, 1862, Vol. VI, page 224.
‡ Dudley to Adams, Vol. II, page 601.
§ Vol. II, page 604.
‖ Customs Report, Vol. II, page 605; Vol. VI, page 231.
¶ See Mr. Dudley's dispatches of March 7, 12, and 15, Vols. II and VI.
** Dudley to Adams, Vol. II, page 594; Vol. VI, page 216.
†† Adams to Russell, Vol. II, page 593; Vol. VI, page 216.
‡‡ Vol. II, pp. 595–596; Vol. VI, page 218.
§§ Vol. II, page 605; Vol. VI, page 231.

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be entered there. Such an examination and such a report can scarcely be regarded as the exercise of the "due diligence" called for by the rules of the Treaty of Washington.

The Florida arrived at Nassau on the 28th of April, and was taken in charge by Heyliger, who was then a well-known and recognized insurgent agent. The Bahama arrived a few days later at the same port by preconcerted arrangement. The two branches of the hostile expedition, which had left Great Britain in detachments, were thus united in British waters. They were united in their conception in the contracts with Fawcett, Preston, and Co. They were temporarily separated by the shipment of a portion of the ammunition and stores by rail to Hartlepool, and thence by the Bahama. They were now again united, and the vessels went together to Cochrane's Anchorage, a place about nine miles from the harbour of Nassau, not included in the port limits.

While there Captain Hickley, of Her Majesty's ship Greyhound, thought it his duty to make a careful examination of the vessel, and he reported her condition to the Governor. In a remarkable certificate, signed by himself, and by the officers of the Greyhound, dated June 13, 1862, it is stated that he "asked the captain of the Oreto whether the Oreto had left Liverpool in all respects as she was then; his answer was yes; in all respects."* As, therefore, no changes had been made in her after leaving Liverpool, Captain Hickley's report may be taken to be the official evidence of a British expert as to her character, at the time of Mr. Adams' complaints, and of the Customs examinations. He says, "I then proceeded to examine the vessel and found her in every respect fitted as a war vessel, precisely the same as vessels of a similar class in Her Majesty's Navy. She has a magazine and light-rooms forward, handing-rooms and handing-scuttles for powder as in war vessels; shell-rooms aft, fitted as in men-of-war; a regular lower deck with hammock-hooks, mess-shells, &c., &c., as in our own war vessels, her cabin accommodations and fittings generally being those as fitted in vessels of her own class in the Navy. * * * She is a vessel capable of carrying guns; she could carry four broadside-guns forward, four broadside-guns aft, and two pivot-guns amidships. Her ports are fitted to ship and unship; port-bars cut through on the upper part to unship also. The construction of her ports, I consider, are peculiar to vessels of war. I saw shot-boxes all round her upper deck, calculated to receive Armstrong shot, or shot similar. She had breeching bolts and shackles, and side-tackle bolts. Magazine, shell-rooms, and light-rooms are entirely at variance with the fittings of a merchant-ship. She had no accommodation whatever for the stowage of cargo; only stowage for provisions and stores. She was in all respects fitted as a vessel of war of her class in Her Majesty's Navy. * * * *The Oreto, as she now stands, could, in my professional opinion, with her crew, guns, arms, and ammunition, going out with another vessel alongside of her, be equipped in twenty-four hours for battle.*"†

The judge before whom the case was tried, commenting on this evidence, said: "Captain Hickley's evidence as to the construction and fittings of the vessel I should consider conclusive even had there been no other; *but that construction and those fittings were made, not here, but in England.*"‡

This was, therefore, the condition of the Florida when she left Liverpool. That she was then "intended to cruise and carry on war" against the United States there can be no reasonable doubt; that she was "fitted out" and "equipped" within the jurisdiction of Great Britain, with all the fittings and equipments necessary to enable her to carry on such war, is equally clear from Captain Hickley's professional statement. "Arming" alone was necessary to make her ready for battle. By the rules of the Treaty of Washington either the "fitting out" or the "equipping" constitute an offence without the "arming." That Great Britain had reasonable ground to believe that the fitting out and the equipping had been done within its jurisdiction, with intent that she should carry on such a war, the United States claim to have substantiated. That she had been specially adapted within British jurisdiction, to wit, at Liverpool, to warlike use, will scarcely be questioned after the positive testimony of Captain Hickley. That her departure from the jurisdiction of Great Britain might have been prevented after the information furnished by Mr. Adams would seem to be beyond doubt. And that a neglect to prevent such departure was a failure to use the "due diligence" called for by the second clause of the first rule of the Treaty obviously follows the last conclusion. If these several statements are well founded, Great Britain, by permitting the construction of the Florida, at Liverpool, under the circumstances, and by consenting to her departure from that port, violated its duty as a neutral Government toward the United States.

The United States' Consul, soon after the arrival of the Oreto at Nassau, called the

* Vol. VI, page 246. † Vol. VI, pp. 264 and 266. ‡ Vol. V, page 513.

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attention of the Governor to her well-known character.[1] The Governor declined to interfere, and with an easy credulity accepted the statements of the insurgent agents that the vessel was not and would not be armed,[2] and he made no further inquiries. She was then permitted to remain at Cochrane's Anchorage. A second request to inquire into her character was made on the 4th of June, and refused.[3] On the 7th of June both the Oreto and the Bahama were arrested and brought up from Cochrane's Anchorage into the harbour of Nassau. On the 8th the mail-steamer Melita arrived from England, with Captain Raphael Semmes and his officers from the Sumter as passengers. They "become lions at once."[4] The Oreto was immediately released. The Consul reported this fact to his Government, and said that "the character of the vessel had become the theme of general conversation and remark among all classes of the citizens of Nassau for weeks."[5] On the same day Captain Hickley, whose professional eye had detected the purpose of the vessel from the beginning, signed with his officers the certificate quoted above.

The Consul finding that renewed representations to the Governor[6] were met by an answer that the agents of the Oreto assured him of their intention to clear in ballast for Havana, and that he had given his assent to it,[7] applied to Captain Hickley, of the Greyhound, and laid before him the evidence which had already been laid before the civil authorities. He answered by sending a file of marines on board the Oreto and taking her into custody.[8]

The civil authorities at Nassau were all actively friendly to the insurgents. With the Consul of the United States they had only the formal relations made necessary by his official position. With the insurgents it was quite different. We have already seen how Heyliger thought they regarded him. Maffitt, Semmes, and many other insurgent officers were there, and were often thrown in contact with the Government officials. Adderley, the correspondent of Fraser, Trenholm, and Co., and the mercantile agent of the insurgents, was one of the leading merchants of the colony. Harris, his partner, was a member of the Council, and was in intimate social relations with all the authorities The principal law officer of the colony, who would have charge of any prosecution that might be instituted against the Oreto and the cross-examination of the witnesses summoned in her favour, was the counsel of Adderley. All these circumstances, combined with the open partiality of the colonial authorities for the cause of the South, threw the insurgent agents and officers at that critical moment into intimate relations with those local authorities.[9]

If it had been predetermined that the Oreto should be released by going through the form of a trial under the Foreign Enlistment Act,[10] the steps could not have been better directed for that purpose. The trial commenced on the 4th July, 1862.[11] The prosecution was conducted by a gentleman who was at once Crown Counsel, Advocate-General, and confidential counsel of Adderley and Co., and who, in a speech made in a trial in another court, which took place after the Oreto was libeled and before the decree was rendered, said that the Union of the United States was "a myth, a Yankee fiction of the past, now fully exploded."[12] The temper with which he would manage the prosecution of the Oreto may be imagined from this speech. He hurried on the trial before evidence could be obtained from Liverpool. He conducted his cross-examinations so as to suppress evidence unfavourable to the Oreto, when it could be done. He neglected to summon witnesses who must have been within his control, who could have shown conclusively that the Oreto was built for the insurgents, and was to be converted into a man-of-war.[13] Maffitt knew it, but was not called.[14] Heyliger knew it, but was not called. Adderley knew it, but was not called. Evans and Chapman were both there—

[1] Consul Whiting to Governor Bayley, May 9, 1862, Vol. VI, page 235.
[2] Nesbitt to Whiting, May 13, 1862, Vol. VI, page 236.
[3] Vol. VI, pp. 238–239.
[4] Whiting to Seward, June 19, 1862, Vol. VI, page 241.
[5] Whiting to Seward, June 13, 1862, Vol. VI, page 242.
[6] Whiting to Bayley, June 12, 1862, Vol. VI, page 243.
[7] Nesbitt to Whiting, June 13, 1862, Vol. VI, page 244.
[8] Whiting to Seward, June 18, 1862, Vol. VI, page 250.
[9] Kirkpatrick to Seward, Vol. VI, page 327.
[10] This seemingly harsh statement is fully borne out by the report of the trial. See Vol. V, page 509.
[11] Governor Bayley to Captain Hickley, June, 1862.
[12] Whiting to Seward, August 1, 1862, Vol. VI, page 261.
[13] If the Tribunal will read the summary of this case in the opinion of the Court, which may be found at page 509 of Vol. V, it will be found that this statement is not too strong.
[14] The Oreto had in fact been ordered by Bullock, as agent of the Confederate Government, from one shipbuilding firm, as the Alabama had been ordered by him from another; and Captain Maffitt, the officer appointed to command her, was all this while at Nassau, awaiting the result of the trial.—*Bernard's Neutrality of Great Britain*, page 351.

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officers in the insurgents' navy, under the direction of Maffitt, drawing pay from him as an officer in that navy, and giving receipts as such.* They knew all about it, but were not called. Harris,† a member of the firm of Adderley and Co., was called, but his cross-examination was so conducted as to bring out nothing damaging to the vessel.‡ He said, for instance, that the Oreto was consigned to him by Fraser, Trenholm, and Co., and was to clear for St. John's, New Brunswick. It might have been supposed that counsel desirous of ascertaining the truth would have followed up these clues, and would have shown from this witness the origin and the real purposes of the vessel; but that was not done.

The direct examination of Captain Hickley, of the Greyhound, disclosed that officer's opinion of the character and destination of the Oreto. His cross-examination was conducted by a gentleman who was represented to be the Solicitor-General of the Colony, but who, in this case, appeared against the Crown. The testimony of sailors was also received, to show that the vessel carried Confederate flags, and that Semmes and the other insurgent officers were in the habit of visiting her.

The judge, in deciding the case, disregarded the positive proof of the character, intent, and ownership of the vessel. He said that he did not believe the evidence as to the insurgent flags, coming from common sailors, and he added, "Had there been a Confederate flag on board the Oreto, I should not consider it as very powerful evidence." The overwhelming testimony of Captain Hickley and his officers was summarily disposed of. To this he said, "I have no right whatever to take it into consideration; the case depends upon what has been done since the vessel came within this jurisdiction." While thus ruling out either as false or as irrelevant evidence against the vessel which events proved to be true and relevant, he gave the willing ear of credence to the mis-statements of the persons connected with the Oreto. He could see no evidence of illegal intent in the acts of those who had charge of the Oreto. It is no wonder that the trial ended on the 2nd of August, with a judgment that, "Under all these circumstances I do not feel that I should be justified in condemning the Oreto. She will therefore be restored."§

The United States call the attention of the Arbitrators to the important fact that the principal ground on which this vessel was released, namely, the irrelevancy of the evidence of Captain Hickley and his associates, was believed by Her Majesty's Government not to be in accordance with British law. When the news of the seizure of the Oreto arrived at London, Earl Russell directed inquiries to be made, "in order that a competent officer should be sent to Nassau, in order to give evidence as to what occurred at Liverpool in the case of that vessel."‖ Her Majesty's Government evidently considered that it would be relevant and proper to show the condition of the vessel when she left Liverpool; and should it appear, as it did appear in Captain Hickley's testimony, that at the time of her leaving she was fitted out as a man-of-war, with intent to cruize against the United States, then it would be entirely within the scope of the powers of the court in Nassau to condemn her for a violation of the Foreign Enlistment Act of 1819. Had the trial not been hurried on, such probably would have been the instructions from London.

Both before and after the release of the Oreto, Maffitt was shipping a crew at Nassau. One witness deposes¶ to shipping forty men. On the 8th of August she cleared for St. John's, New Brunswick. This was on its face a palpable fraud. On the 9th the schooner Prince Alfred went to the wharf of Adderley and Co., the Nassau correspondents of Fraser, Trenholm, and Co., and there took on board eight cannon and a cargo of shot, shells, and provisions, and then went over the bar and laid her course for Green Cay, one of the British Bahama Islands, about sixty miles distant from Nassau. The Oreto, having been thoroughly supplied with coal while at the island of New Providence, lay outside with a hawser attached to one of Her Majesty's ships of war. When the Prince Alfred appeared she cast off the hawser, and followed and overtook the Prince Alfred, and gave her a tow. It was a bright moonlight night, with a smooth sea, and the voyage was soon made. The arms and ammunition, and so much of the supplies as she had room for, were then transferred to the Oreto; the rest were taken back to Nassau, where the Prince Alfred went unmolested for her violation of the

* See Evans and Chapman's vouchers, Nassau, July 28, Vol. VI, page 330.

† See Consul Kirkpatrick's dispatch to Mr. Seward, July 7, 1865, as to the standing of these men, Vol. VI, page 327.

‡ Vol. V, page 517.

§ Vol. V page 521; Vol. VI, page 285.

‖ Vol. II, pp. 610–611.

¶ Solomon's deposition, Vol. VI, page 310.

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law. The two vessels parted company, and the Oreto, now called the Florida, made for the coast of Cuba.

The United States ask the Tribunal of Arbitration to find that in these proceedings which took place at Nassau and in the Bahamas, Great Britain was once more guilty of a violation of its duty, as a neutral, toward the United States, in regard to this vessel.

The Oreto had been within the jurisdiction of Great Britain at Liverpool, specially adapted to warlike use, with intent that she should cruise or carry on war against the United States. She had come again at Nassau within the jurisdiction of Her Majesty, and no steps were taken to prevent her departure from that jurisdiction. This alone was a violation of the duties prescribed by the second clause of the first rule of the Treaty; but it was not the only failure of Her Majesty's officials to perform their duties at *that time* as the *representative* of a *neutral* Government.

The Oreto was armed within British jurisdiction, namely, at Green Cay. The arrangements for arming, however, were made in the harbour of Nassau; and the two vessels left that port almost simultaneously, and proceeded to Green Cay together. The purpose for which they went was notorious in Nassau. This was so palpable an invasion that the act should be assumed as having taken place in the harbour of Nassau. In either event, however, the act was committed within British jurisdiction, and was therefore a violation of the first clause of the first rule of the Treaty.

In like manner the same acts, and the enlistmeut of men at New Providence, were violations of the second rule of the Treaty. There was no diligence used to prevent any of these illegal acts.

From Green Cay the Florida went to Cardenas, in the Island of Cuba, and attempted to ship a crew there. "The matter was brought to the notice of the Government, who sent an official to Lieutenant Stribling, commanding during Lieutenant Commanding J. N. Maffitt's illness, with a copy of the [Spanish] Queen's Proclamation, and notification to him that the Florida had become liable to seizure."* This efficient conduct of the Spanish authorities made the officers of the Florida feel at once that they were no longer in British waters. She left Cuba, and on the 4th of September she ran through the blockading squadron of Mobile, pretending to be a British man-of-war, and flying British colours.

During the night of the 16th of January, 1863, the Florida left Mobile. On the morning of the 26th of the same month, she re-entered the harbour of Nassau. Between Mobile and Nassau she had destroyed three small vessels, the Corris Ann, the the Estelle, and the Windward. At Nassau she was received with more than honour. She "entered the port without any restrictions,"† and "the officers landed in the garrison boat, escorted by the Post Adjutant, Lieutenant Williams, of the Second West India Regiment."† The Governor made a feint of finding fault with the mode in which she had entered, but ended by giving her all the hospitality which her Commander desired. She was at Nassau for thirty-six hours,‡ and while there she took in coal and provisions to last for three months.§ This coal was taken on board by "permission of the authorities."‖

The attention of the Tribunal of Arbitration is also invited to the excess of these and all similar hospitalities, as violations of the instructions issued on the 31st of January, 1862.¶

"These orders required every ship of war or privateer of either belligerent, which should enter British waters, to depart within twenty-four hours afterward, except in case of stress of weather, or of her requiring provisions or things necessary for the subsistence of her crew, or repairs. In either of these cases she was to put to sea as soon after the expiration of the twenty-four hours as possible, taking in no supplies beyond what might be necessary for immediate use, and no more coal than would carry her to the nearest port of her own country, or some nearer destination, nor after coaling once in British waters was she to be suffered to coal again within three months, unless by special permission."**

* Copy of voucher of Manuel Corany, Vol. VI, page 331.

† Whiting to Seward, January 26, 1863, Vol. VI, page 333.

‡ Whiting to Seward, January 27, 1863, Vol. VI, page 333.

§ Journal quoted ante, page —. See also Vol. II, page 617. See also Vol. VI, page 335, the deposition of John Demerith, who says, "We filled her bunkers with coal, and placed some on deck and in every place that could hold it. I suppose that she had on board over one hundred and eighty tons that we put there. She did not have less than that quantity. The coal was taken from the wharves and from vessels in the harbour. The money for coaling her was paid from Mr. Henry Adderley's store."

‖ Whiting to Wells, Vol. II, page 616.

¶ Vol. IV, page 175.

** Bernard's Neutrality of Great Britain, pp. 265 and 266.

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These rules were rigidly enforced against the United States. They were not only relaxed, but they were oftentimes utterly disregarded in the treatment of the insurgent vessels.

The Florida, when at Nassau, in the months of May, June, and July 1862, and again in the month of January 1863, was distant from Wilmington, Charleston, or Savannah, only two, or at most three, days' steaming. She ordinarily sailed under canvas. Even when using steam in the pursuit and capture of vessels her consumption of coal, as shown by her log-book, did not average four tons a-day. Thirty tons (more than the amount taken by the United States' steamer Dacotah in September 1862), was all that she should have been allowed to take on board under the instructions, even had she been an honest vessel, and one that Great Britain was not bound to arrest and detain. Yet, in July 1862, she received all the coal she wanted, and in January 1863, she took on board a three months' supply.

The Tribunal also will note, that in January 1863, the entry into the harbour, though made without permission, was condoned; that the visit lasted thirty-six hours instead of twenty-four; and that the "supplies" exceeded largely what was immediately necessary for the subsistence of the crew.

This excessive hospitality was in striking contrast with the receptions given to vessels of the United States at that port. It has already been shown that, in December 1861, the United States had been forbidden to land coals at Nassau or Bermuda, except on condition that it should not be used for their vessels of war. It has also been shown that, in September 1862, the United States war-steamer Dacotah was forbidden to take more than twenty tons of coal, and that only upon condition that for ten days she would not re-appear in British waters. On the 20th of the previous November the Commander of the Wachusett was informed that he could not be allowed even to anchor, or to come within three miles of the shore, without permission of the Governor. In fact, the indignities to which the vessels of the United States were subjected were so great that the Rear-Admiral in command of the fleet, on the 2nd January, 1863, wrote to the Secretary of the Navy, "I have not entered any British port except Bermuda, nor do I intend to enter, or permit any of the vessels of the squadron to ask permission to enter, or subject myself or those under my command to the discourtesies those who had entered heretofore had received.*

The United States insist that these excessive hospitalities to the Florida, and these discourtesies to the vessels of war of the United States constituted a further violation of the duties of Great Britain as a neutral. By furnishing a full supply of coal to the Florida, after a similar hospitality had been refused to the vessels of the United States, the British officials permitted Nassau to be made a base of hostile operations against the United States; and for this, as well as for other violations of duty as to that vessel, which have been already noticed, Great Britain became liable to the United States for the injuries resulting from her acts.

The Florida left the port of Nassau on the afternoon of the 27th of January, 1863. By the middle of the following month her coal was getting low. On the 26th day of February, Admiral Wilkes, in command of the United States' squadron in the West Indies, wrote to his Government thus:—"The fact of the Florida having but a few days' coal makes me anxious to have our vessels off the Martinique, which is the only island at which they can hope to get any coal or supplies, the English islands being cut off under the rules of Her Majesty's Government for some sixty days yet, which precludes the possibility, unless by chicanery or fraud, of the hope of any coal or comfort there."† Admiral Wilkes' hopes were destined to disappointment. On the 24th of February, two days before the date of his despatch, the Florida had been in the harbour of Barbados, and had taken on board about 100 tons‡ of coal in violation of the instructions of January 31, 1862.

Rear-Admiral Wilkes, hearing of this new breach of neutrality, visited Barbados ten days later to inquire into the circumstance. He addressed a letter to the Governor, in which he said, "I have to request your Excellency will afford me the opportunity of laying before my Government the circumstances under which the Florida was permitted to take in a supply of coal and provisions to continue her cruize and operations, after having so recently coaled and provisioned at Nassau, one of Her Majesty's Colonies in the West Indies, ample time having been afforded, some thirty days, for the information to have reached this island and Government; and if any cause existed why an investigation was not instituted after the letter to your Excellency was received from the

* Rear-Admiral Wilkes to the Secretary of the Navy, January, 2, 1862.
† Admiral Wilkes to Mr. Welles, Vol. VI, page 338.
‡ Trowbridge to Seward, Vol. II, page 619; Vol. VI, page 339.

United States Consul."* The Governor evaded the question. He "doubted very much whether it would be desirable to enter into correspondence upon the points adverted to," and said that "in sanctioning the coaling of the Florida, he did no more than what he had sanctioned in the case of the United States' steamer of war San Jacinto."† There was no parallel or even resemblance between the treatment of the San Jacinto and that of the Florida. On the 13th of November, 1863, the San Jacinto received seventy-five tons of coal and some wood at Barbados. With that exception she received no coal or other fuel from a British port during that cruise.‡

Under these circumstances the United States must ask the Tribunal to declare that the burden is upon Great Britain to establish that this express violation of Her Majesty's Proclamation was innocently done. Whether done innocently or designedly, they insist, for the reasons already set forth, that the act was a new violation of the duties of a neutral, and furnished to the United States fresh cause of complaint against Great Britain.

Before completing the history of this vessel, the United States desire to show to the Tribunal how the vessels of the United States were received at Barbados, the port at which the Florida received the last-mentioned supply of coal. They have already referred to the treatment of their vessels at Nassau and Bermuda. Captain Charles Boggs arrived at Barbados, in April 1865, in the United States' war steamer Connecticut, and made application for permission to remain there "a few days for the purpose of overhauling the piston and feed-pump of the engine."§ The Governor replied, "It will be necessary for you, before I can give my sanction to your staying here longer than twenty-four hours, to give a definite assurance of your inability to proceed to sea at the expiration of that time, and as to the period within which it would be possible for you to execute the necessary repairs."‖ Captain Boggs replied, "Your letter virtually refuses the permission requested, inasmuch as it requires me to give a definite assurance of my inability to proceed to sea at the termination of twenty-four hours. This I cannot do, as an American man-of-war can always go to sea in some manner. I shall do this, although with risk to my vessel and machinery. Regretting that the national hospitality of remaining at anchor for the purposes named in my letter of this morning is refused, I have the honour to inform you that I shall depart from this port to-morrow at 10 A.M."¶

Barbados as well as Nassau having been thus made a base of hostile operations against the United States, the Florida again sailed out on her work of destruction on the evening of the 26th of February, 1863, and in a short time captured or destroyed the following vessels of the commercial marine of the United States, viz.: the Aldebaran, the Clarance, the Commonwealth, the Crown Point, the General Berry, the Henrietta, the M. J. Colcord, the Lapwing, the Oneida, the Reinzi, the Southern Cross, the Star of Peace, the William B. Nash, and the Red Gauntlet. An intercepted letter from her commander to Bullock, dated April 25, 1863, says, "The Florida has thus far done her duty. Six million dollars will not make good the devastation this steamer has committed."**

On the 16th of July, 1863, the Florida arrived at Bermuda. She remained nine days in that port, and was thoroughly repaired both in her hull and machinery. She also took on board a full supply of the best Cardiff coal, which had been brought to her from Halifax by the transport Harriet Pinckney.†† This was permitted, notwithstanding the general order that neither belligerent was to be permitted to make coal depôts in British colonial ports.

Here, again, were fresh-recurring violations of the duties of Great Britain as a neutral, to be added to the accumulated charges that have already been made as to this vessel.

With the improvements, repairs, and supplies obtained at Bermuda, the Florida started for Brest. In crossing the Atlantic she destroyed the Francis B. Cutting on the 6th of August, and the Avon on the 20th. On the 3rd of September Maffitt reports from Brest, to Bullock at Liverpool, "a list of men discharged from the Florida, with their accounts and discharges." and he asks him to "provide them

* Wilkes to Walker, Vol. II, page 628; Vol. VI, page 343.
† Walker to Wilkes, Vol. II, page 629; Vol. VI, page 344.
‡ Robeson to Fish, Vol. VI, page 345.
§ Captain Boggs to Governor Walker, Vol. VI, page 178.
‖ Governor Walker to Captain Boggs, Vol. VI, page 178.
¶ Captain Boggs to Governor Walker, Vol. VI, page 179.
** Vol. II, page 629; Vol. VI, page 346.
†† Consul's report to Mr. Seward.

Insurgent Cruisers: The Florida and her tenders.

situations in the service."* We have already seen that when Bullock received this letter he was low in funds.† He was, however, able to send from Liverpool to Brest, for the Florida, some new machinery and armament,‡ and also a crew.§

The Florida left Brest in January, 1864, and entered the port of Bermuda in the following May, remaining, however, only long enough to land a sick officer. In June she returned to that port and made application for permission to repair. The Governor directed an examination to be made by experts, who reported:‖ "1. She can proceed to sea with such repairs as can be made good here, which, as far as we can judge, will require five days for one man, viz., a diver for two days and a fitter for three days; or three complete days in all. 2. She can proceed to sea with safety in her present state under steam, but under sail is unmanageable with her screw up in bad weather, and her defects aloft (cross-trees) render maintop-mast unsafe. This could be made good in two days." On this report, the Florida received permission to remain there five days; she actually remained nine days. While there she took on board one hundred and thirty-five tons of coal, half a ton of beef, half a ton of vegetables, a large supply of bread, provisions, and medicines, a large supply of clothing and other stores, and twenty days of carpenter's work were done upon the vessel.¶ Morris, the new commander, then drew upon Bullock, in Liverpool, in order to pay these bills and provide himself with means for a cruise; and on the 27th of June, 1864, the Florida, being thus completely fitted out, left the port of Bermuda, and cruized off the harbour, boarding all vessels approaching the island.**

The breach of neutrality and violation of the instructions issued for the observance of British officials involved in these transactions were brought to Earl Russell's notice by Mr. Adams.†† Earl Russell replied that, "although some disposition was manifested by the Commander of the Florida to evade the stringency of Her Majesty's regulations, the most commendable diligence and strictness in enforcing those regulations was observed on the part of the authorities, and no substantial deviation, either from the letter or from the spirit of those regulations, was permitted to, or did take place."‡‡

With the evidence now submitted to the Tribunal, which are the original vouchers for the purchases made at Bermuda by the Florida, it is evident that Earl Russell must have been misinformed when he stated that there had been no deviation from the regulations. The five days' stay which was granted was extended to nine. Twenty days' carpenter work were done instead of five; supplies for a cruise were taken instead of supplies for immediate use; clothing, rum, medicines, and general supplies were taken, as well as supplies for the subsistence of the crew; one hundred and thirty-five tons of coal were taken instead of twenty. In all this the United States find fresh and cumulative cause of complaint on account of this vessel.

They also call the particular attention of the Tribunal to the fact that at that time there was no necessity of making any repairs to the Florida. The experts employed by the Governor to make the examination reported, "*She can proceed to sea with safety in her present state under steam.*" The repairs, therefore, were only necessary to enable her to use her sails, banking her fires,§§ and laying to for the purpose of watching and destroying the commerce of the United States. Permitting any repairs to be made at that time was another violation of the duties of Great Britain as a neutral towards the United States.

The Florida left Bermuda on the 27th of June, 1864. On the 1st of July she destroyed the Harriet Stevens; the Golconda on the 8th; the Margaret Y. Davis on the 9th; the Electric Spark on the 10th; and the Mondamin on the 26th of September, all being vessels belonging to the commercial marine of the United States. On the 7th of October, 1864, her career as an insurgent cruizer terminated at Bahia.

During her cruize, three tenders were fitted out and manned from her officers and crew. The Clarence was captured by her off the coast of Brazil on the 6th of May, 1863. She was then fitted out with guns, officers, and men, and during the first part

* Vol. II, page 639; Vol. VI, page 349.

† *Ante*, page — .

‡ Dudley to Seward, January 21, 1864. Fraser, Trenholm, and Co., to Barney, September 22, 1863, Vol. VI, page 352.

§ Morse to Seward, January 8, 1864, Vol. VI, page 353.

‖ Vol. VI, page 357.

¶ See the vouchers for their payments, Vol. VI, page 358, *et seq.*

** Welles to Seward, Vol. II, page 652.

†† Adams to Russell, Vol. II, page 651.

‡‡ Russell to Adams, Vol. II, page 653.

§§ Maffitt to Barney, Vol. VI, pp. 351–352.

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of the month of June 1863, captured and destroyed the Kate Stuart, the Mary Alvina, the Mary Schindler, and the Whistling Wind. On the 10th of that month she captured the Tacony. The Clarence was then destroyed and the Tacony was converted into a tender, and, in the same month, destroyed the Ada, the Byzantian, the Elizabeth Ann, the Goodspeed, the L. A. Macomber, the Marengo, the Ripple, the Rufus Choate, and the Umpire.* On the 25th she captured the Archer. The crew and armament were transferred to that vessel and the Tacony burned. On the 27th the United States' revenue cutter Caleb Cushing was destroyed by the Archer.

The amount of injury which the United States and its citizens suffered from the acts of this vessel and of its tenders will be hereafter stated. The United States, with confidence, assert that they have demonstrated that Great Britain, by reason of the general principles above stated, and in consequence of the particular acts or omissions hereinbefore recited, failed to fulfil all of the duties set forth in the three rules of the sixth Article of the Treaty, or recognized by the principles of international law not inconsistent with such rules, and they ask the Tribunal to certify that fact as to the Florida and as to its tenders. Should the Tribunal exercise the power conferred upon it by Article VII of the Treaty to award a sum in gross to be paid to the United States, they ask that, in considering the amount so to be awarded, the losses of individuals in the destruction of their vessels and cargoes, by the Florida, or by its tenders, and also the expenses to which the United States were put in the pursuit of either of those vessels may be taken into account.

The Alabama, and her Tender the Tuscaloosa.

The Alabama, and her tender the Tuscaloosa.

The Alabama, a vessel which has given the generic name to the claims before this Tribunal, is thus described by Semmes, her Commander:—"She was of about 900 tons burden, 230 feet in length, 32 feet in breadth, 20 feet in depth, and drew, when provisioned and coaled for cruize, 15 feet of water. She was barkentine-rigged, with long lower masts, which enabled her to carry large fore and aft sails, as jibs and try-sails. The scantling of the vessel was light compared with vessels of her class in the Federal Navy, but this was scarcely a disadvantage, as she was designed as a scourge of the enemy's commerce rather than for battle. Her engine was of 300 horse-power, and she had attached an apparatus for condensing from the vapour of sea-water all the fresh water that her crew might require. * * * Her armament consisted of eight guns; six 32-pounders in broadside, and two pivot-guns amidship, one on the forecastle and the other abaft the mainmast, the former a 100-pounder rifled Blakeley and the latter a smooth-bore 8-inch."†

The Alabama was built, and from the outset was "intended for, a Confederate vessel of war."‡ The contract for her construction was "signed by Captain Bullock on the one part and Messrs. Laird on the other." The date of the signature cannot be given exactly. The drawings were signed October 9, 1861, and it is supposed that the contract was signed at or about the same time. "The ship cost in United States' money about 255,000 dollars." The payments were made by the agents of the insurgents. Bullock "went almost daily on board the gun-boat, and seemed to be recognized in authority;" in fact, "he superintended the building of the Alabama."§

On the 15th of May she was launched under the name of the 290.‖ Her officers were in England awaiting her completion, and were paid their salaries "monthly, about the first of the month, at Fraser, Trenholm, and Co.'s office in Liverpool."¶

The purpose for which this vessel was being constructed was notorious in Liverpool. Before she was launched she became an object of suspicion with the Consul of the United States at that port, and she was the subject of constant correspondence on his part with his Government and with Mr. Adams.**

The failure of Mr. Adams to secure in the previous March the interference of Her Majesty's Government to prevent the departure of the Florida, appears to have induced him to think that it would be necessary to obtain strictly technical proof of a violation of the municipal law of England before he could hope to secure the detention of the then nameless Alabama. That he had good reason to think so is not open to reasonable

* Vol. VI, page 370.
† Semmes Adventures Afloat, pp. 402–403.
‡ Journal of an officer of the Alabama. See Vol. IV, page 181.
§ Dudley to Edwards, Vol. III, page 17; Vol, VI, page 383.
‖ Dudley to Seward, Vol. III, page 1; Vol. VI, page 371.
¶ Vol. III, page 146; Vol. VI, page 435.
** See Vol. III, *passim*.

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doubt. On the 23rd of June he thought he had such proof. He wrote Earl Russell that day,* recalling to his recollection the fact that, notwithstanding the favourable reports from the Liverpool Customs in regard to the Florida, there was the strongest reason for believing that she had gone to Nassau, and was there "engaged in completing her armament, provisioning, and crew," for the purpose of carrying on war against the United States.† He continued, "I am now under the painful necessity of apprising your Lordship that a new and more powerful war-steamer is nearly ready for departure from the port of Liverpool on the same errand." "The parties engaged in the enterprise are persons well known in Liverpool to be agents and officers of the insurgents of the United States." This vessel has been built and launched from the dock-yard of persons, one of whom is now sitting as a member of the House of Commons, and is fitting out for the especial and manifest object of carrying on hostilities by sea." He closed by soliciting such action as might "tend either to stop the projected expedition, or to establish the fact that its purpose is not inimical to the people of the United States."

Earl Russell replied that he had referred "this matter to the proper department of Her Majesty's Government,"‡ and on the 4th of July, 1862, he inclosed the Customs report on the subject, in which it is stated that "the officers have at all times free access to the building yards of the Messrs. Laird, at Birkenhead, where the vessel is lying, and *that there has been no attempt, on the part of her builders, to disguise, what is most apparent, that she is intended for a ship of war.*" It is further said that "the description of her in the communication of the United States' Consul is most correct, with the exception that her engines are not constructed on the oscillatory principle." "With reference to the statement of the United States'-Consul that the evidence he has in regard to this vessel being intended for the so-called Confederate Government in the Southern States is entirely satisfactory to his mind," it was said that "the proper course would be for the Consul to submit such evidence as he possesses to the collector at that port, who would thereupon take such measures as the Foreign Enlistment Act would require;" and the report closed by saying "that the officers at Liverpool will keep a strict watch on the vessel."§ The point that the vessel was intended for a vessel of war being thus conceded, Mr. Adams thereupon, at once, relying upon the promise to keep watch of the vessel, instructed the Consul to comply with the directions indicated in the report of the Commissioners and furnish all the evidence in his possession to the Collector of Customs at Liverpool.‖

Mr. Dudley did so on the 9th of July, in a letter to the Collector of Liverpool,¶ and the attention of the Tribunal of Arbitration is called to the fact that every material allegation in that letter has been more than borne out by subsequent proof. The Collector replied that he was "respectfully of opinion that the statement made was not such as could be acted upon by the officers of the revenue unless legally substantiated by evidence."** And again, a few days later he said to Mr. Dudley, "The details given by you in regard to the said vessel are not sufficient, in a legal point of view, to justify me in taking upon myself the responsibility of the detention of this ship."††

Thus early in the history of this cruiser the point was taken by the British authorities—a point maintained throughout the struggle—that they would originate nothing themselves for the maintenance and performance of their international duties, and that they would listen to no representations from the officials of the United States which did not furnish technical evidence for a criminal prosecution under the Foreign Enlistment Act.

The energetic Consul of the United States at Liverpool was not disheartened. He caused a copy of his letter to be laid before R. P. Collier, Esq., one of the most eminent barristers of England, who, a few months later, became Solicitor-General of the Crown, under Lord Palmerston's administration, and who is now understood to be the principal law adviser of the Crown.

Mr. Collier advised that "the principal officer of the Customs at Liverpool * * be applied to to seize the vessel, with a view to her condemnation," and, "at the same time, to lay a statement of the fact before the Secretary of State for Foreign Affairs,

* Adams to Russell, Vol. III, page 5; Vol. VI, page 375.

† The Florida arrived at Nassau April 28, and the Bahama with her armament a few days later. These facts were undoubtedly known to Lord Russell and to Mr. Adams when this letter was written.

‡ Russell to Adams, Vol. III, page 6; Vol. VI, page 376.

§ Vol. III, page 7; Vol. VI, page 379.

‖ Adams to Wilding, *Vol. III, page 8; Vol. VI, page 381.*

¶ Dudley to Edwards, *Vol. III, page 17; Vol. VI, page 383.*

** Edwards to Dudley, *Vol. III, page 19; Vol. VI, page 385.*

†† Vol. VI, page 389.

coupled with the request that her Majesty's Government would direct the vessel to be seized, or ratify the seizure if it has been made."*

It was useless to attempt to induce the Collector to seize the vessel. Mr. Dudley thereupon set about to get the direct proof required by the authorities as to the authorities as to the character of the Alabama or 290. "There were men enough," he said, "who knew about her, and who understood her character, but they were not willing to testify, and, in a preliminary proceeding like this, it was impossible to obtain process to compel them. Indeed, no one in a hostile community like Liverpool, where the feeling and sentiment are against us, would be a willing witness, especially if he resided there, and was any way dependent upon the people of that place for a livelihood."† At last Mr. Dudley succeeded in finding the desired proof. On the 21st day of July, he laid it in the form of affidavits before the Collector at Liverpool, in compliance with the intimations which Mr. Adams had received from Earl Russell.‡ These affidavits were on the same day transmitted by the Collector to the Board of Customs at London, with a request for instructions by telegraph, as the ship appeared to be ready for sea and might leave any hour.§ Mr. Dudley then went to London, and on the 23rd of July laid the affidavits before Mr. Collier for his opinion.‖ Copies of the affidavits will be found in Vol. III, pages 21 to 28, and Vol. VI, page 391, *et seq.*

It is not necessary to dwell upon the character of this proof, since it was conclusively soon passed upon by both Mr. Collier and by Her Majesty's Government. It is sufficient to say that it showed affirmatively that the 290 was a "fighting vessel;" that she was "going out to the Government of the Confederate States of America to cruise and commit hostilities against the Government and people of the United States of America;" "that the enlisted men were to join the ship in Messrs. Laird and Co.'s yard;" that they were enlisting men "who had previously served on fighting ships;" that the enlistments had then been going for over a month, and that there was need of immediate action by the British Government, if action was to be of any service in protecting its neutrality against violation.

Mr. Collier said immediately, "It appears difficult to make out a stronger case of infringement of the Foreign Enlistment Act, which, if not enforced on this occasion, is little better than a dead letter. It well deserves consideration whether, if the vessel be allowed to escape, the Federal Government would not have serious grounds of remonstrance."¶

The 290 was at this time nearly ready for sea, and time was important. Mr. Dudley, through his counsel, in order that no time might be lost, on the same day laid Mr. Collier's new opinion before the Under-Secretary of State for Foreign Affairs and before the Secretary of the Board of Customs. The Under-Secretary "was not disposed to discuss the matter, nor did he read Mr. Collier's opinion."** The Secretary of the Board of Customs said that the Board could not act without orders from the Treasury Lords.†† The last of these answers was not communicated until the 28th of July.

The additional proof and the new opinion of Mr. Collier were also officially communicated to Her Majesty's Government through the regular diplomatic channels. On the 22nd of July copies of the depositions of Dudley, Maguire, DaCosta, Wilding, and Passmore were sent to Lord Russell by Mr. Adams; ‡‡ and on the 24th of July copies of the depositions of Roberts and Taylor were in like manner sent to Lord Russell. These were acknowledged by Earl Russell on the 28th.

On that day "these papers were considered by the Law Officers of the Crown; on the same evening their report was agreed upon, and it was in Lord Russell's hands early on the 29th. Orders were then immediately sent to Liverpool to stop the vessel."§§

Thus it appears that this intelligence, which Great Britain regarded as sufficient to require the detention of the 290, was communicated to Her Majesty's Government in three ways: first, on the 21st of July, through the channel at Liverpool, which had been indicated by Earl Russell; second, on the 22nd by the solicitor of Mr. Dudley in person to the Customs and to the Under-Secretary of State for Foreign Affairs at the Foreign Office; and thirdly, on the 23rd and on the 24th by Mr. Adams officially. It

* Vol. III, page 16; Vol. VI, page 388.
† Dudley to Seward, Vol. III, page 13.
‡ Dudley to Seward, Vol. III, page 13; Vol, VI, page 390.
§ Collector to Commissioners, Vol. III, page 20; Vol, VI, page 395.
‖ Vol. III, page 29; Vol. VI, page 398.
¶ Vol. III, page 29; Vol. IV, page 398.
** Squary to Adams, Vol. III, page 29; Vol. VI, page 397.
†† Vol. III, page 31; Vol. VI, page 406.
‡‡ Vol. III, page 21; Vol. VI, page 397.
§§ A speech delivered in the House of Commons on Friday, August 4, 1871, by Sir Roundell Palmer, M.P. for Richmond, page 16.

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also appears that the information communicated on the 21st was transmitted to London by the collector, with the statement that the vessel might sail at any hour, and that it was important to give the instructions for detention by telegraph; and it still further appears that, notwithstanding this official information from the collector, the papers were not considered by the Law Advisers until the 28th, and that the case appeared to them to be so clear that they gave their advice upon it that evening. Under these circumstances, the delay of eight days after the 21st in the order for the detention of the vessel was, in the opinion of the United States, gross negligence on the part of Her Majesty's Government. On the 29th, the Secretary of the Commission of the Customs received a telegram from Liverpool, saying that "the vessel 290 came out of the dock last night, and left the port this morning." * Mr. Adams was justly indignant at the failure of the Customs authorities to redeem their voluntary promise to watch the vessel.†

On the 31st of July Mr. Adams had a "conference with Lord Russell at the Foreign Office," at which "his Lordship first took up the case of the 290, and remarked that a delay in determining upon it had most unexpectedly been caused by the sudden development of a malady of the Queen's Advocate, Sir John D. Harding, totally incapacitating him for the transaction of business. This had made it necessary to call in other parties, whose opinion had been at last given for the retention of the gun-boat, but before the order got down to Liverpool the vessel was gone. *He should, however, send directions to have her stopped* if she went, as was possible, to Nassau.‡ The judgment of Her Majesty's Government upon the character of the Alabama and upon he duty of Great Britain toward her was, therefore, identical with that of Mr. Collier.

The departure of the 290 from Birkenhead was probably, it may be said certainly, hastened by the illicit receipt of the intelligence of the decision of the Government to detain her.§

After leaving the dock she "proceeded slowly down the Mersey. Both the Lairds were on board, and also Bullock. On the way down the river Laird settled with the paymaster for some purchases for the vessel, and paid into his hands a small sum of money.‖

At the bell-buoy the Lairds and the ladies left by a tug, and returned to Liverpool. The 290 slowly steamed on to Moelfra Bay, on the coast of Anglesey, were she remained "all that night, all the next day, and the next night." No effort was made to seize her.

During this time the Hercules, which had returned from the bell-buoy with the Lairds and the ladies, took on board at Liverpool a number of new hands for the 290. One account says there were as many as forty.¶ The master of the Hercules admits that there might have been thirty.** This was done publicly—so publicly that the United States' Consul knew of it, and notified the Collector. The Collector had his orders to seize the 290, and had only to follow the Hercules to get the information which would enable him to obey those orders. He did cause the Hercules to be examined. The Surveyor who did that work reported to him that there were a number of persons on board, who admitted "that they were a portion of the crew, and were going to join the gun-boat," †† and yet he neither stopped the Hercules nor followed it. In an emergency when, if ever, the telegraph ought to have been employed, he wrote a letter by mail to the Commissioners of the Customs at London,‡‡ which could not be received until the following day. When this letter was received the Commissioners took no notice of the admitted recruitment of men, but ordered inquiries to be made as to powder and guns.§§ Before these inquiries could be commenced, the offender was at sea.‖‖ Under these circumstances this hesitation and delay, and the permitting the Alabama to lie unmolested in British waters for over two days, is little short of criminal in the officials who were or should have been cognizant of it.

When the Alabama left Moelfro Bay her crew numbered about ninety men.¶¶ She

* Vol. III, page 36.
† Adams to Russell, Vol. III, page 536.
‡ Vol. III, pages 35, 36; Vol. VI, page 414.
§ Semmes says in his Adventures, "Fortunately for the Confederate vessel tidings of the projected seizure were conveyed to Birkenhead." "Our unceremonious departure was owing to the fact of news being received to the effect that the Customs authorities had orders to board and detain us that morning." Vol. IV, page 181.
‖ Vol. III, page 147; Vol. VI, page 437.
¶ Vol. VI, page 408.
** Vol. VI, page 411.
†† Vol. VI, page 409.
‡‡ Vol. VI, page 410.
§§ Vol. IV, page 410.
‖‖ Vol. IV, page 413.
¶¶ Vol. III, page 46. Two crew lists are in the accompanying volumes. One will be found in Vol. III, page 150; the other in Vol. III, page 213.

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ran part way down the Irish Channel, then round the north coast of Ireland, only stopping near the Giant's Causeway. She then made for Terceira, one of the Azores, which she reached on the 10th of August.*

On the 18th of August, while she was at Terceira, a sail was observed making for the anchorage. It proved to be the "Agrippina of London, Captain McQueen, having on board six guns, with ammunition, coals, stores, &c., for the Alabama." Preparations were immediately made to transfer this important cargo. On the afternoon of the 20th, while employed discharging the bark, the screw-steamer Bahama, Captain Tessier (the same that had taken the armament to the Florida, whose insurgent ownership and character were well known in Liverpool), arrived, "having on board Commander Raphael Semmes and officers of the Confederate States' steamer Sumter."† There was also taken from this steamer two 32-pounders and some stores,‡ which occupied all the remainder of that day and a part of the next.

The 22nd and 23rd of August were taken up in transferring coal from the Agrippina to the Alabama. It was not until Sunday (the 24th) that the insurgents' flag was hoisted. Bullock and those who were not going in the 290 went back to the Bahama, and the Alabama, now first known under that name, went off with "twenty-six officers and eighty-five men."

If it be necessary for the Tribunal to ascertain and determine what was the condition of the Alabama when she left Liverpool on the 29th of July, 1862, the affidavits of various witnesses, printed in the accompanying Volume (III), will enable them to do so with accuracy.§ If any details are wanting, they can easily be supplied from the account which her commander has given of his Adventures Afloat.‖

It is clear from all these statements that when she left Liverpool she was even more completely fitted out as a man-of-war than the Florida, at the time of her departure. The Tribunal will recall what Captain Hickley, a competent expert, said of that vessel: "*She was in all respects fitted out as a vessel of war of her class* in Her Majesty's Navy." "As she now stands she could, in my professional opinion, be equipped in twenty-four hours for battle." This is not too strong language to be used concerning the Alabama. She was, in fact, equipped for battle in little more than twenty-four hours after the Bahama joined her.

It is not necessary, however, to consider this question; for her guilty status at that time is conclusively established against Great Britain.

1st. By the opinion of Mr. Collier, who, soon after giving it, became a Member of Her Majesty's Government, under the lead of Lord Palmerston, and with Earl Russell as a colleague. They must, therefore, be held to have adopted his views on one of the most important questions, half legal and half political, that came before Lord Palmerston's Government for determination.

2nd. Her Majesty's Government, by ordering the detention of the 290, admitted her illegal character. Earl Russell himself hints that it is not impossible that "the officers of the Customs were misled or blinded by the general partiality to the cause of the South known to prevail at Liverpool, and that a *primâ facie* case of negligence could be made out."¶

3rd. Earl Russell stated to Mr. Adams in an official note that "it is undoubtedly true that the Alabama was partly fitted out in a British port."** This is all that is necessary to be said in order bring it within the operation of the rules of the Treaty of Washington.

Thus constructed, equipped, fitted out, and manned as a ship of war in Liverpool, and armed under the original contract made at the same place with arms and munitions there collected by the contractors of the vessel, but sent out from Great Britain by a separate vessel in order to comply with the official construction of British municipal

* Vol. IV, page 182.

† Journal of an officer of the Alabama. See Vol. IV, page 182.

‡ The Bahama cleared from Liverpool on the 12th of August. Fawcett, Preston, and Co. shipped on board of her "nineteen cases containing guns, gun-carriages, shot, rammers, &c., weighing in all 158 cwt. 1 qr. 27 lbs. There was no other cargo on board, except five hundred and fifty-two tons of coal for the use of the ship." Vol. III, page 54; see also Vol. III, page 141, for further details.

§ See particularly Younge's deposition. Vol. III, page 145; Passmore's deposition, Vol. III, page 25; and Latham's deposition, Vol. III, page 211. See also Vol. VI, pages 435 and 472.

‖ I had arrived on Wednesday [at Terceira,], and on Saturday night we had, by dint of great labour and perseverance, drawn order out of chaos. * * * The ship having been properly prepared, we steamed out on this bright Sunday morning; the flag of the Confederate States was unfurled for the first time from the peak of the Alabama.—*Semmes' Adventures Afloat*, pages 408, 409.

¶ Speeches and despatches of Earl Russell, Vol. II, pp. 259–260.

** Earl Russell to Mr. Adams, Vol. III, page 299.

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law, the Alabama commenced a career of destruction which proved highly disastrous to the commerce of the United States.

She was found to be a "fine sailer under canvas," "a quality of inestimable advantage," as it enabled Captain Semmes "to do most of his work under sail."* "She carried but an eighteen day's supply of fuel," which induced her commander "to adopt the plan of working under sail in the very beginning," and "to practise it unto the end." "With the exception of half a dozen prizes, all captures were made with the screw hoisted and ship under sail."†

The United States will confine their comments to the official treatment which this vessel received within British jurisdiction. Her history for a large part of her career may be found in Vol. IV, between pages 181 and 201. It has also been made the subject of an elaborate volume, from which some short extracts have been quoted above.

From Terceira she crossed to the West Indies, taking at Martinique coal again from the barque Agrippina, which had been sent from England for the purpose;‡ and she passed up thence into the Gulf of Mexico, marking her course by the destruction of vessels of the merchant marine of the United States, and of their war-steamer Hatteras. On the 18th January, 1862, she arrived at Jamaica. Three British men-of-war were in the harbour, but the promised orders of Earl Russell to detain her for a violation of British sovereignty were not there. In lieu of that, "the most cordial relations were at once established between the officers of all these ships and of the Alabama,§ and the Governor of the island promptly granted Semmes's request to be permitted to repair his ship.‖ On the 25th of January, having been refitted and furnished with supplies, she left Jamaica, "bound to the coast of Brazil, and thence to the Cape of Good Hope."¶

On the 30th of the previous November, after Captain Semmes' mode of carrying on war was known in England, Mr. Adams made to Lord Russell the first of a long series of representations concerning this vessel. This communication contains a summary of all that the United States deem it necessary to say about the Alabama in this place. "It now appears," Mr. Adams says, "from a survey of all the evidence," first, that this vessel was built in a dock-yard belonging to a commercial house in Liverpool, of which the chief member, down to October of last year, is a member of the House of Commons. Secondly, that from the manner of her construction, and her peculiar adaptation to war purposes, there could have been no doubt by those engaged in the work, and familiar with such details, that she was intended for other purposes than those of legitimate trade; and, thirdly, that during the whole process and outfit in the port of Liverpool, the direction of the details, and the engagement of persons to be employed in her, were more or less in hands known to be connected with the insurgents in the United States. It further appears that since her departure from Liverpool, which she was suffered to leave without any of the customary evidence at the Custom-house to designate her ownership, she has been supplied with her armament, with coals, and stores, and men, by vessels known to be fitted out and dispatched for the purpose from the same port, and that although commanded by Americans in her navigation of the ocean, she is manned almost entirely by English seamen, engaged and forwarded from that port by persons in league with her commander. Furthermore, it is shown that this commander, claiming to be an officer acting under legitimate authority, yet is in the constant practice of raising the flag of Great Britain, in order the better to execute his system of ravage and depredation on the high seas. And, lastly, it is made clear that he pays no regard whatever to the recognized law of capture of merchant vessels on the high seas, which requires the action of some judicial tribunal to confirm the rightfulness of the proceedings, but, on the contrary, that he resorts to the piratical system of taking, plundering, and burning private property, without regard to consequences, or responsibility to any legitimate authority whatever."**

The course of conduct so forcibly sketched by Mr. Adams was continued by the officers of the Alabama until that vessel was sunk by the Kearsarge off Cherbourg.

* Semmes' Adventures Afloat, page 419.

† Same, page 420.

‡ Same, page 514. The Agrippina is the same vessel that took coal and supplies to her at Terceira.

§ Same, page 555.

‖ *Ibid.* "By the act of consenting to receive the Alabama in Kingston, and permitting her to refit and supply herself at that, we had considered the British Government as having given her a positive recognition, and having assumed the responsibility for the consequences of that sanction."—*Mr. Adams' statement to Lord Russell, described in a dispatch to Mr. Seward,* Vol. III, page 247.

¶ Semmes' Adventures Afloat, page 563.

** Vol. III, pages 70, 71.

Insurgent Cruisers: The Alabama, and her tender the Tuscaloosa.

The Alabama went from the West Indies to Bahia, where she met the Georgia. She then crossed to the Cape of Good Hope, and entered Table Bay, as has already been seen.* It is not necessary to say again what took place as to the Tuscaloosa: to speak of the evident character of the vessel with the captured cargo on board; of the honest indignation of Rear-Admiral Sir Baldwin Walker at the flimsy attempt to convert the prize into a cruiser; of the partiality of the Governor and the Attorney-General; of the decision of Her Majesty's Government that she must be regarded as a prize and not as a cruiser; of the reluctant enforcement of the decision of the Government by the Colonial Authorities; or of the refusal of that decision by Her Majesty's Government, when they found that it had been enforced. These facts have all been sufficiently set forth. It only remains to add, that, when Her Majesty's Government had determined to send the instructions to disregard in similar cases such attempts to change the character of a prize, Earl Russell informed Mr. Adams of the fact, and added "Her Majesty's Government hope that, under those instructions, nothing will for the future happen to admit of a question being raised as to Her Majesty's orders having been strictly carried out."† Earl Russell could not have anticipated that the first and only attempt of the authorities at Cape Town to carry out those instructions, would be disavowed by Her Majesty's Government, and that restoration would be ordered to the insurgents of the only vessel ever seized under them.

From Cape Town the Alabama pushed into the Indian Ocean, and, "within a day or two of six months,"‡ returned again to Cape Town on the 20th of March, 1864. During her absence she had coaled at Singapore, with the consent of the authorities, at the wharf of the Peninsular and Oriental Steamship Company.§

On the 21st of March the Alabama began taking on board fresh supplies of coal in Cape Town.‖ The last coal from a British port (and, in fact, the last supply) had been taken on board at Singapore on the 23rd day of the previous December.¶ The new supply was allowed to be put on board within three months from the time when the last supply was received in a British port. This was a fresh violation of the duties of Great Britain as a neutral.

On the 25th of March the Alabama "got up steam and moved out of Table Bay for the last time, amidst lusty cheers and the waving of handkerchiefs from the boats by which they were surrounded."‖ "Military and naval officers, governors, judges, superintendents of Boards of Trade, Attorneys-General, all on their way to their missions in the far East, came to see her."**

She now made her way to northern waters, and, on the 11th of June, 1864, cast anchor in the harbour of Cherbourg. Her career was now finished. The United States war-steamer Kearsarge was in those waters, and on the 19th of the same June, within sight of Cherbourg, this British-built, British-armed, and British-manned cruiser went down under the fire of American guns.

During her career the Alabama fitted out one tender, the Tuscaloosa. The "Conrad of Philadelphia, from Buenos Ayres for New York, with part of a cargo of wool," was captured on the 20th of June, 1863, in latitude 25° 48′ south.†† It has already been seen that this prize was taken into the port of Cape Town, under the name of the Tuscaloosa, and under pretence of a commission; and that the pretence was recognized as valid. When the Alabama left to cruise in the Indian Ocean, Semmes "dispatched this vessel from Angra Pequena back to the coast of Brazil, to make a cruise on that coast."‡‡ It has also been seen how, on her return to Cape Town, she was seized by the Governor of Cape Town, and held until the close of the struggle.

The United States ask the Tribunal of Arbitration, as to the Alabama and as to her tender, to determine and to certify that Great Britain has, by its acts and by its omissions, failed to fulfil its duties set forth in the three rules of the Treaty of Washington, or recognized by the principles of law not inconsistent with such rules. Should the Tribunal exercise the power conferred upon it by Article VII of the Treaty, to award a sum in gross to be paid to the United States, they ask that, in considering the amount to be awarded, the losses of the United States, or of individuals, in the destruction of their vessels, or their cargoes by the Alabama, or by its tender, and also

* *Ante*, page 73.
† Vol III, page 203.
‡ Semmes' Adventures Afloat, *page 737.*
§ Semmes' Adventures Afloat, *page 715.*
‖ Semmes' Adventures Afloat, *page 744.*
¶ This is evident from Semmes' account of his voyage on *leaving Singapore, page 715, et seq.*
** Semmes' Adventures Afloat, page 745.
†† Semmes' Adventures Afloat, page 627.
‡‡ Semmes' Adventures Afloat, page 738.

Insurgent Cruisers: The Alabama, and her tender the Tuscaloosa.

the expense to which the United States were put in the pursuit of either of those vessels, or in the capture and destruction of the Alabama, may be taken into account.

In addition to the general reasons already stated, they ask this for the following reasons:—

1. That the Alabama was constructed, was fitted out, and was equipped within the jurisdiction of Great Britain, with the intent to cruise and carry on war against the United States, with whom Great Britain was then at peace; that Great Britain had reasonable ground to believe that such was the intent of that vessel, and did not use due diligence to prevent such construction, fitting out, or equipping.

2. That the Alabama was constructed and armed within British jurisdiction. The construction of the vessel and the construction of the arms; the dispatch of the vessel and the dispatch of the arms—all took place at one British port; and the British authorities had such ample notice that they must be assumed to have known all these facts. The whole should be regarded, therefore, as one armed hostile expedition, from a British port, against the United States.

3. That the Alabama, having been specially adapted to warlike use at Liverpool, and being thus intended to cruise and carry on war against the United States, Great Britain did not use due diligence to prevent her departure from its jurisdiction at Liverpool; nor, subsequently, from its jurisdiction at Kingston; nor, subsequently, from its jurisdiction at the Cape of Good Hope; nor, subsequently, from its jurisdiction at Singapore; nor lastly, from its jurisdiction again at the Cape of Good Hope, as required by the rules of the Treaty of Washington.

4. That Great Britain did not, as Earl Russell had promised, send out orders for her detention.

5. That the Alabama received excessive hospitalities at Cape Town on her last visit, in being allowed to coal before three months had expired after her coaling at Singapore, a British port.

6. That the responsibility for the acts of the Alabama carries with it responsibility for the acts of her tender.

The Retribution.

The Retribution.

The steam-propeller Uncle Ben, built at Buffalo, in New York, in 1856, was sent to the southern coast of the United States just prior to the attack on Fort Sumter. Entering Cape Fear River in stress of weather, she was seized by the insurgents. Her machinery was taken out, and she was converted into a schooner, and cruised, under the name of the Retribution, about the Bahama Banks. On the 19th day of December, 1862, she captured, near the island of San Domingo, the United States' schooner Hanover, and took the prize to Long Cay (Fortune Island), Bahamas, and there sold the cargo "without previous judicial process."* Representations being made of these facts, an answer was made by the Colonial Authorities, claiming that they were deceived, and that they supposed that the person making the sale was the master of the vessel.† Mr. Seward replied that this answer was not "deemed altogether conclusive." Subsequently one Vernon Locke was represented as the person who had, "by fraudulent personations and representations procured the admission of that vessel [the Hanover] to entry at the Revenue Office and effected the sale of her cargo there."‡ Locke was indicted, and bail accepted in the sum of 200*l*. The United States are not aware that he was ever brought to trial. Mr. Seward thought the bail "surprisingly small and insignificant."‡ On the 19th of February, 1863, when off Castle Island, one of the Bahamas, she captured the American brig Emily Fisher, freighted with sugar and molasses. This prize also "was taken to Long Cay, one of the Bahama Islands, and notwithstanding the protest of Captain Staples [the master], and in the presence of a British Magistrate, was despoiled of her cargo; a portion of which was landed, and the balance wilfully destroyed."§ The Retribution then went to the harbour of Nassau, where she was sold, assuming the name of the Etta.§

The United States, with confidence, ask the Tribunal to find and certify as to this vessel, that Great Britain failed to fulfil the duties set forth in the three rules of Article VI of the Treaty, or recognized by the principles of International Law not

* Mr. Seward to Lord Lyons, Vol. I, page 701.
† Burnside to Nesbitt, Vol. I. page 702.
‡ Governor Bayley to Duke of Newcastle, Vol. I, page 706.
§ Affidavit of Thomas Sampson, Vol. VI, page 736.

inconsistent with such rules. They ask this, not only for the general reasons heretofore mentioned as to this class of vessels, but because, in the case of each of the captured vessels above named, the acts complained of were done within Her Majesty's jurisdiction.

Insurgent Cruisers: The Retribution.

The Georgia.

The Georgia.

The Georgia was built for the insurgents at Dunbarton, below Glasgow, on the Clyde. She was launched on the 10th day of January, 1863, at which time, as has already been said, "a Miss North, daughter of a Captain North, of one of the Confederate States, officiated as priestess, and christened the craft Virginia."* It was notorious that she was being constructed for this service.† When finished she was a "screw-steamer of about five hundred tons register, clipper-built; figure-head, fiddle-bow; short thick funnel; with a number of compartments forward on both sides, from eight to ten feet square, and stronger than a jail, strong doors to them, with hinges about three inches thick, and brass padlocks accordingly, and a strong magazine forward in the bow." On Friday, the 27th March, she left for Greenock. By this time she had parted with her name Virginia, and had the name Japan "written in small letters on her bow;" and it was pretended that her voyage was to be to China.

On the evening of Monday, the 30th March, some seventy or eighty men who had been shipped at Liverpool for this vessel were sent to Greenock.‡ The agreements with this crew were made with by the house of Jones and Co., of Liverpool,§ who advanced money to them.‖ The vessel was registered in the name of Thomas Bold, of Liverpool, a member of the house of Jones and Co., and a near connexion of Maury, who afterwards commanded her. It remained registered in his name until the 23rd day of the following June.¶ When the men arrived in the Clyde from Liverpool, the Japan was "lying in the river opposite Greenock," and they were taken on board in a tug. On the morning of the 2nd of April they ran out toward the sea, but returned in the afternoon, and remained near the light-house down the Clyde, taking on board more men and provisions from Greenock. They started again, and next morning they were off Castleton, Isle of Man.** Here they changed their course, and went into the Atlantic, through the northern passage, between Ireland and Scotland. On the 6th of April they reached the coast of France. Ushant Light was the first place they sighted. Here they turned their steps toward Malo, proceeding under slow steam, and in the morning they sighted, off Morleaux,†† the steamer Alar, with arms, ammunition, and supplies for the Georgia, under charge of Jones, a partner in the Liverpool house of Jones and Co.‡‡

It happened that these proceedings were afterward made the subject of judicial investigation before Sir Alexander Cockburn, Lord Chief Justice of England. Highatt and Jones, two of the members of the firm of Jones and Co., were indicted at Liverpool, for a violation of the Foreign Enlistment Act of 1819, in causing these men to be enlisted to serve in a war against the United States. The case came on for trial at the Liverpool Assizes, in August, 1864. In his address to the jury, after the evidence was in, the Lord Chief Justice said: "There was no doubt that Matthews, Stanley, and Glassbrook did enter themselves and enlist on board the steamer, which was immediately afterward employed as a war-steamer in the Confederate service, for the purpose of waging war against the Northern States of America; and there seemed to be very little doubt that both the defendants had to do with the men's leaving the port of Liverpool, for the purpose of joining the Japan, afterward called the Georgia. * * * Now came the question, whether the defendants had procured the men to be engaged in war against a country toward which this country was bound to maintain a strict neutrality. No doubt it was possible that the defendants might have been under a delusion that the ship was engaged for a voyage to China. It was for the jury to say whether they believed that to have been the case. If they believed the witnesses Conolly and Glassbrook, the defendant Jones could not have been of that opinion, because he was on board the small steamer which was an important agent in the transaction; and when he found out what the steamer really was, he manifested no surprise or horror.

* Underwood to Seward, January 16, 1863, Vol. VI, page 503.
† Extracts from London Daily News, February 12 and 17, 1863, Vol. VI, page 503, *et seq.*
‡ Dudley to Seward, Vol. II. page 665; Vol. VI, page 509.
§ Vol. II, page 681; Vol. VI, page 516; Vol. VII, page 88.
‖ Vol. II, page 672; Vol. VI, page 512; Vol. VII, page 88.
¶ Mr. Adams to Earl Russell, Vol. II, pages 677-8; Vol. VII, page 88.
** Mahon's affidavit, Vol. II, page 672; Vol. VI, page 513.
†† Thompson's affidavit, Vol. II, page 671; Vol. VI, page 511.
‡‡ Speech of Thomas Baring, Esq., M.P., Hansard, 3rd series, Vol. 175, page 467.

Insurgent Cruisers: The Georgia.

It was true that the jury had to rely on the evidence of men who had turned traitors to the people they had sworn to serve, and who had since played the spy upon the persons who, as they alleged, had engaged them. But, on the other hand, there was no attempt to show them that, on the day when these men signed articles at Brest, Mr. Jones was on board, and if he was on board it was difficult to suppose he could have got there with the innocent intention described by the defence. It seems strange that if they were acting as agents for Mr. Bold, they did not now call upon him to come into court, and state that they were innocently employed, and perfectly unconscious that the vessel was intended to go on a warlike expedition. Although sometimes it was an inconvenience and hardship that a man, charged as the defendants were, could not be called to give his own evidence, sometimes it was a vast convenience to persons accused that they could not be called, because if they were, they would be constrained to admit, unless they committed perjury, that the truth was on the other side."*

The Alar, with her cargo, had cleared at Newhaven for St. Malo. When the two vessels met, the Georgia took the Alar in tow, and they floated about on those waters during the whole day. At night they came to anchor, probably off the island of Ushant, and the Georgia commenced taking in arms and ammunition and supplies. Three days passed in this way. There were nine breech-loading guns to be mounted on decks, and "guns, shot, shells, rockets, ammunition, rifles, cutlasses and all sorts of implements of war."†

All were put on board before Friday, the 10th of April; the insurgents' flag was then hoisted; Maury, the insurgent officer destined for the command, produced his commission; the Japan was changed into the Georgia; fifteen sailors who refused to cruise in her were transferred to the Alar, and the Georgia continued her cruise.

On the 8th of April Mr. Adams called Earl Russell's attention to the departure from the Clyde and Newhaven of this hostile expedition, "with intent to depredate on the commerce of the United States,"‡ and he stated his belief that the destination of the vessel was the island of Alderney. Earl Russell replied, on the same day, that copies of his letter "were sent, without loss of time, to the Home Department and to the Board of Treasury, with a request that an immediate inquiry might be made into the circumstances stated in it, and that if the result should prove the suspicions to be well founded, *the most effective measures might be taken which the law admits of for defeating any such attempts to fit out a belligerent vessel from a British port.*"§

Had Her Majesty's Government taken the measures which Earl Russell suggested, it is probable that the complaints of the United States, as to this vessel, might not have been necessary. The sailing and the destination of the Japan were so notorious as to be the subject of newspaper comment.‖ No time, therefore, was required for that investigation. It could have been very little trouble to ascertain the facts as to the Alar. The answer to a telegram could have been obtained in a few minutes. Men-of-war might have been dispatched on the 8th from Portsmouth and Plymouth, to seize both these violators of British sovereignty. In doing this Her Majesty's Government need only have exercised the same powers which were used against General Saldanha's expedition, arrested at Terceira in 1827, and whose use in that case was sustained by a vote of both Houses of Parliament.¶ The island of Alderney and the other Channel islands were on the route to St. Malo and Brest, and it is not at all probable, scarcely possible, that the Alar and the Georgia would not have been discovered. The purposes of the latter vessel, thus taken *flagrante delicto*, would then have been exposed.

This was not done. Instead of directing *action* to be taken by the *Navy*, Lord Russell caused *inquiries* to be made by the *Home* Office and the *Treasury*, and the Georgia escaped.

On the 1st December, 1863, Mr. Adams called Lord Russell's attention to the fact of "the existence of a regular office in the port of Liverpool for the enlistment and payment of British subjects, for the purpose of carrying on war against the Government and the people of the United States;" and he expressed the hope that "the extraordinary character of these proceedings as well as the hazardous consequence to the future peace of all nations of permitting them to gain any authority under the international law, will not fail to fix the attention of Her Majesty's Government."**

* Vol. IV, page 567.
† Vol. II, page 671; Vol. VI, page 511.
‡ Vol. II, page 666; Vol. VI, page 509.
§ Vol. II, page 667; Vol. VI, page 510.
‖ Vol. II, page 668.
¶ Hansard, new series, Vols. XXIII and XXIV; Annual Register, History, &c., A.D. 1829, Vol. LXXII, page 187.
** Vol. II, page 682; Vol VI, page 519.

The depositions inclosed in this communication furnished conclusive proof that the members of the firm of Jones and Co. were still engaged at Liverpool in procuring and shipping men for the Georgia, and that the payments of the wages of the crew of that vessel were regularly made through the same firm.* It was also proved that Jones had superintended the shipping of the armament of the Georgia off Brest; that he had been standing by the side of Maury when he assumed command, and that he had told the men, as an inducement to them to remain, that "of course they would get the prize money."†

On the 11th of January, 1864, Mr. Adams inclosed to Lord Russell copies of papers which he maintained went "most clearly to establish the proof of the agency of Messrs. Jones and Co. in enlisting and paying British subjects in this Kingdom to carry on war against the United States."‡ Proceedings were taken against Jones and Highatt, as has already been shown. They were convicted, and were fined but fifty pounds each—manifestly a punishment not calculated to deter them from a repetition of the offence.§

After all this information was before Lord Russell, the Georgia, on the 1st day of May, 1864, reappeared in the port of Liverpool. During her absence she had been busy in destroying such of the commerce of the United States in the Atlantic as had escaped the depredations of the Florida and Alabama. She had been to the Western Islands, and from thence to the Brazilian port of Bahia. From thence she went to the Cape of Good Hope. On the way she fell in with the Constitution, a merchant vessel of the United States, laden with coal. "We filled our vessel with coal from her," says one of the witnesses. In a few days after that she entered Simons Bay, Cape of Good Hope. There she stayed a fortnight, having repairs done and getting more coal. She left Simon's Bay on the 29th of August. It is not probable that the supply from the Constitution was exhausted at that time.‖ She then worked her way to Cherbourg, and in a short time after came again into the port of Liverpool. Her career and character were rapidly but forcibly sketched by Thomas Baring, Esq., in a speech in the House of Commons on the 13th of May, 1864. He said: "At the time of her departure the Georgia was registered as the property of a Liverpool merchant, a partner of the firm which shipped the crew. She remained the property of this person until the 23rd of June, when the register was cancelled, he notifying the Collector of her sale to foreign owners. During this period, namely, from the 1st of April to the 23rd June, the Georgia being still registered in the name of a Liverpool merchant, and thus his property was carrying on war against the United States, with whom we were in alliance. It was while still a British vessel that she captured and burned the Dictator, and captured and released, under bond, the Griswold, the same vessel which had brought corn to the Lancashire sufferers. The crew of the Georgia were paid through the same Liverpool firm. A copy of an advance note used is to be found in the Diplomatic Correspondence. The same firm continued to act in this capacity throughout the cruise of the Georgia. After cruising in the Atlantic, and burning and bonding a number of vessels, the Georgia made for Cherbourg, where she arrived on the 28th of October. There was, at the time, much discontent among the crew; many deserted, leave of absence was given to others, and their wages were paid all along by the same Liverpool firm. In order to get the Georgia to sea again the Liverpool firm enlisted in Liverpool some twenty seamen, and sent them to Brest. The Georgia left Cherbourg on a second cruise, but having no success she returned to that port, and thence to Liverpool, where her crew have been paid off without any concealment, and the vessel is now laid up. Here, then, is the case of a vessel, clandestinely built, fraudulently leaving the port of her construction, taking Englishmen on board as her crew, and waging war against the United States, an ally of ours, without once having entered a port of the Power the commission of which she bears, but being, for some time, the property of an English subject. She has now returned to Liverpool—and has returned, I am told, with a

* Vol. II, pages 683, 684, 686, 689, &c.

† Stanley's affidavit, Vol. II, page 684; Vol. VI, page 522. See also Charles Thompson's affidavit, Vol. III, page 87.

‡ Vol. II, page 698; Vol. VI, page 534.

§ "Five prosecutions were instituted at different times against persons charged with having enlisted or engaged men for the naval service of the Confederate States. Of these, three were successful. Five of the accused were convicted or pleaded guilty. * * No prosecution appears to have been instituted against Bullock himself." (*Bernard's Neutrality*, pages 361-2.) This is a terribly small record, considering the magnitude of the offences committed, and considering the zeal shown in repressing enlistments for the service of the United States. (*See Vol. IV, page* 547, *and Vol. IV, page* 540.) It is to be observed, too, the Mr. Adams furnished Lord Russell with evidence to sustain a prosecution against Bullock. (*Mr. Adams to Earl Russell, March* 30, 1863, *Vol. III, page* 130.)

‖ See the affidavits in Vol. II, page 684, *et seq.*

Insurgent Cruisers: The Georgia.

British crew on board, who, having enlisted in war against an ally of ours, have committed a misdemeanor in the sight of the law."*

The Attorney-General, Sir Roundell Palmer, replied on behalf of the Government to this speech. He did not seriously dispute the facts as stated by Mr. Baring. "The whole of the honourable gentleman's argument," he said, "assumes that the facts, and the law applicable to the facts, are substantiated; that we are in a position, as between ourselves and the Confederates, to treat the matter as beyond controversy; and to assume that the Georgia was, in fact, fitted out in violation of our neutrality. Now we may have very strong reason to suspect this, and may even believe it to be true; but to say that we are to act upon strong suspicion or belief against another state, upon certain facts which have never been judicially established, and which it is not easy to bring to the test as between Government and Government, that is a proposition which is not, without grave consideration, to be accepted."† He found a defence for the irresolution and inactivity of the Government in the fact that the United States were unwilling to abandon their claims for compensation for the losses by the acts of the Alabama. "I have no hesitation," he said, "in saying that the United States, by advancing such demands, and by seeking to make our Government responsible for pecuniary compensation for prizes taken by the Alabama upon the high seas, and never brought within our ports or in any way whatever under our control, are making demands directly contrary to the principles of international law laid down by their own jurists; and thereby they render it infinitely more difficult for us, at their request, to do anything resting on our own discretion."‡

When it was apparent that the Georgia was to be allowed to remain in Liverpool, and that she was not to be made subject to the rules of January 31, 1862, Mr. Adams addressed a note to Lord Russell, in which he said: "I learn that she is about to remain for an indefinite period, the men having been discharged. I scarcely need to suggest to your Lordship that it has become a matter of interest to my Government to learn whether this vessel assumes the right to remain in virtue of her former character, or, if received in a later one, why she is permitted to overstay the period of time specified by the terms of Her Majesty's Proclamation. * * I cannot but infer, from the course previously adopted towards the armed vessels of the United States, that any such proceeding, if taken by one of them, would have been attended by an early request from your Lordship to myself for an explanation."§

Having received no answer to these questions, Mr. Adams, on the 7th of June, 1864, informed Lord Russell that he had received from the Consul of the United States at Liverpool information that a transfer purporting to be a sale had been made of the Georgia by the insurgents or their agents at Liverpool, and on behalf of the Government of the United States he "declined to recognize the validity of the sale."‖

While Mr. Adams was vainly endeavouring to ascertain from Lord Russell whether the Georgia entered the port of Liverpool as a merchant-ship or as a man-of-war, that vessel went into dock at Birkenhead, and had her bottom cleaned and her engines overhauled.¶ The insurgent agents went through the form of selling her to a person who was supposed to be in collusion with them. All this was communicated to Earl Russell by Mr. Adams.** Lord Russell, in his reply to these notes, took no notice of Mr. Adams' protest against the validity of the sale, or of his inquiries as to the character the vessel enjoyed in the port of Liverpool. He said that the evidence failed to satisfy him that the steamer Georgia would be again used for belligerent purposes; and he added that, "with a view to prevent the recurrence of any question such as that which has arisen in the case of the Georgia, Her Majesty's Government have given directions that in future no ship of war of either belligerent shall be allowed to be brought into any of Her Majesty's ports for the purpose of being dismantled or sold."††

This terminated the discussion on the questions raised by Mr. Adams. A few days later the career of the Georgia itself was terminated by its capture by the United States' vessel of war Niagara.

The United States ask the Tribunal of Arbitration to also certify as to this vessel, that Great Britain has, by its acts and omissions, failed to fulfil the duties set forth in

* Hansard, third series, Vol. CLXXV, page 467; Vol. V, page 577.
† Hansard, third series, Vol. CLXXV, pp. 484–485.
‡ Same, page 488.
§ Vol. II, page 703; Vol. VI, page 538.
‖ Vol. II, page 710; Vol. VI, page 543.
¶ Wilding to Seward, Vol. II, page 711; Vol. VI, page 543.
** Vol. II, page 713; Vol. VI, page 545.
†† Earl Russell to Mr. Adams, Vol. II, page 719; Vol. VI, page 550.

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the three rules of the sixth Article of the Treaty, or recognized by the principles of international law not inconsistent with such rules. Should the Tribunal exercise the power conferred upon it by Article VII of the Treaty to award a sum in gross to be paid to the United States, they ask that, in considering the amount to be awarded, the losses of the United States and of individuals, and the expense to which the United States were put in the pursuit and capture of the Georgia may be taken into account.

They ask this, in addition to the general reasons already assigned, for the following reasons applicable to this particular vessel:

1. That, though nominally cruising under the insurgent flag, and under the direction of an insurgent officer, the Georgia was essentially a British vessel. The evidence on this point cannot be better stated than in the words to which Mr. Thomas Baring gave the great weight of his name in the House of Commons. When she returned to Liverpool, in May 1864, she was received as a British vessel. Mr. Adams' inquiries of Earl Russell failed to elicit a response that she was not. No steps were taken against her or against the parties concerned in fitting her out, equipping and arming her, or against any one concerned in the destruction of the commerce of the United States, with the exception of the proceedings as to enlistments. The United States insist that by reason of the origin and history of the vessel, and by reason of this negligence of Her Majesty's Government, Great Britain became justly liable to the United States for the injuries done by this vessel.

2. Great Britain did not use due diligence to prevent the fitting out and equipping of the Georgia within its jurisdiction. It was notorious that she was being constructed for use under the insurgent flag. (*See the extract from the News, and Underwood's despatch*). Her fittings were of such a nature and character as to have afforded of themselves a reasonable ground to believe that she was intended to cruise or to carry on war; and her destination rendered it certain that that war was to be carried on against the United States. It was, therefore, the duty of Great Britain to prevent her departure from the Clyde.

3. It was the duty of Her Majesty's Government, on the receipt of Mr. Adams' note of the 8th of April, to take the most effectual measures which the law admitted of for defeating the attempt to fit out the Georgia from a British port. Lord Russell admitted this measure of duty in his reply to Mr. Adams' note. The most effectual, and in fact the only effectual remedy, was not taken, so far as known to the United States. Vessels of war dispatched from Plymouth and Portsmouth, immediately on the receipt of Mr. Adams' note, into the waters about Brest and the Channel Islands, would have afforded a complete remedy. This was a measure sanctioned by British precedent and by British law. (*See the Terceira case, above cited.*) The failure to adopt that "effectual measure," taken in connection with the original fitting out and equipping of the Georgia, in the Clyde, and with the arming her through the Alar, at Newhaven, constitute a violation of the duties of Great Britain as a neutral toward the United States, which entails upon it the obligation to make full compensation for the injuries caused by the acts of the Georgia.

4. When the Georgia arrived at Cape Town, Great Britain failed to detain her. This was a violation of the duties of a neutral, as set forth in the second clause of the first rule of the Treaty of Washington.

The Tallahassee or The Olustee.

The Tallahassee or Olusteo.

The Tallahassee was "a British steamer fitted out from London to play the part of a privateer out of Wilmington."* She was originally called the Atlanta.† Under that name she arrived in Bermuda from England on the 18th day of April, 1864. She made two trips as a blockade-runner between there and Wilmington, and then went out for a cruise as a vessel of war. Her captures were principally made under the name of the Tallahassee. Some were made under the name of the Olustee. It is not quite clear whether she made two trips, one under each name, or whether the name was changed in one trip in order to blind the pursuers.‡ On the 19th of August, 1864, she arrived in Halifax, after destroying several vessels near Cape Sable. The Consul of the United States at Halifax reported her as "about six hundred tons burden," "an iron double-screw steamer," having "about one hundred and twenty men."§ He also

* Mr. Adams to Earl Russell, Vol. I, page 709; see Vol. VI, page 728.
† Morse to Seward, Vol. VI, page 727.
‡ Boreham's affidavit, Vol. VI, page 732.
§ Mr. Jackson to Mr. Seward, 19th August, 1864, Vol. VI, page 728.

Insurgent Cruisers: The Tallahassee or Olustee.

said that the insurgents had established a coal depôt there. On arrival, the officer in command called upon the Admiral and Lieutenant Governor. He gives the following account of what took place: "My reception by the first (the Admiral) was very cold and uncivil; that of the Governor less so. I stated I was in want of coal, and that as soon as I could fill up I would go to sea—that it would take from two to three days. No objection was made at the time—if there had been I was prepared to demand forty-eight hours for repairs. The Governor asked me to call next day and let him know how I was progressing and when I would leave. I did so, and then was told that he was surprised that I was still in port; that we must leave at once; that we could leave the harbour with only one hundred tons of coal on board. I protested against this, as being utterly insufficient. He replied that the Admiral had reported that quantity sufficient (and in such matters he must be governed by his statement) to run the ship to Wilmington. The Admiral had obtained this information by sending on board three of his officers, ostensibly to look at our machinery and the twin-screw, a new system, but really *to ascertain the quantity of coal on board, that burned daily, &c.* * * I am under many obligations to our agent, Mr. Weir, for transacting our business, and through his management about one hundred and twenty tons of coal were put aboard instead of half that quantity. * * Had I procured the coal needed I intended to have struck the coast at the Capes of the Delaware, and followed it down to Cape Fear, but I had only coal enough to reach Wilmington on the night of the 25th."*

Had the British authorities at Nassau, Bermuda, Barbados, Cape Town, Melbourne, and other colonial ports, pursued the same course that the Lieutenant-Governor at Halifax did, under the wise advice of the Admiral, the grievances of the United States would have been much less, and this case would have been shorter by many pages. The first time that the rule of January 31, 1862, as to the supply of coal, was fairly carried out, the operations of the insurgent cruiser, to which it was applied, were arrested on the spot, and the vessel was obliged to run for a home port.

The Tallahassee apparently remained in Wilmington for some months. On the 13th of January, 1865, she arrived in Bermuda again, under the name of the Chameleon. On the 19th she sailed again, taking a cargo to Liverpool, where at the close of the war she was claimed by the United States.

From the fact that she was fitted out in London to be used as a privateer for Wilmington, and that she did go out from Wilmington with what purported to be a commission from the insurgent authorities, and did prey upon the commerce of the United States, and for the reasons already given, the United States ask the Tribunal to find and certify as to this vessel as they have been asked to find and certify as to the Sumter and the Nashville, the Florida, and the Alabama, and the Georgia.

The Chickamauga.

The Chickamauga.

Among the new British-built blockade-runners reported by the United States' Consul at Liverpool on the 5th of March, 1864, was "the Edith, new double-screw; two pole masts; forecastle raised one foot higher than bulwark; two funnels; marked to draw nine feet forward and ten aft; no figure head."† She arrived at Bermuda from England, on the 7th day of April, 1864. On the 23rd of the following June she sailed for Wilmington, and on the 7th of the next July arrived from there with cotton. On the 23rd of July she again went to Wilmington.

The Edith was one of that class of blockade-runners, like the Tallahassee, which was owned by the insurgent authorities. In the year 1864 other parties as well as the insurgent authorities were largely engaged in the business of running cotton out of the blockaded ports. Thus, in the quarter in which the Edith left Liverpool, 34,754 bales of cotton were imported into Liverpool from the Southern States, viâ Bermuda, Nassau, Havana, and Matamoras, of which only 7,874 were consigned to Fraser, Trenholm, and Co.‡ The Edith, however, was a vessel belonging to the so-called government at Richmond, and, being found to be fast, and adapted for the sort of war that was carried on against the commerce of the United States, it was determined to put her in commission as a man-of-war.

The attention of the Tribunal of Arbitration is invited to the facile manner in

* Wood to Mallory, 31st August, 1864, Vol. VI, page 729.
† Manuscripts in Department of State. See Vol. VI, pp. 723–725.
‡ Dudley to Seward, 1st April, 1864. Only 697 bales came by way of Havana.

Insurgent Cruisers: The Chickamauga.

which these vessels were permitted to adapt themselves to circumstances. The Sumter cruised as a man-of-war, and received hospitalities as such. She was allowed to change her character in a British port, and then to sail under the British flag as a blockade-runner, owned and operated by the insurgents. The same thing would undoubtedly have been done with the Georgia had she not been captured by the Niagara. The Atlanta started her career as a blockade-runner, owned by the insurgents; she was converted into a man-of-war under the name of the Tallahassee. When unable to pursue further her work of destruction, she became again a carrier for the benefit of the insurgents, and was accepted by Great Britain in her new character. The Edith was now to go through similar transformations.

On the 17th of September she was in commission as a man-of-war. Between that date and the 28th of October she took on board large supplies of coal from blockade-runners. On the 28th of October, having waited for a month for a night dark enough to run the blockade, she put to sea from Wilmington, and run northward toward Long Island. On the 30th she destroyed the bark Mark L. Potter, of Bangor, Maine; on the 31st, the Emily L. Hall, the Shooting Star, the Goodspeed, and the Otter Roch, all vessels under the flag of the United States; on the 2nd of November the bark Speedwell, also a vessel of the United States; and on the 7th of November she reached Bermuda. On the 8th of November she was allowed to come into the harbour, and permission was given for a stay of five days for repairs, and also to take on board twenty-five tons of coal, although she had at that time one hundred tons in her bunkers. She actually staid seven days and took on board eighty-two tons.* On the 15th of November she sailed from Bermuda, and on the 19th arrived at Wilmington.

For the reason already given the United States ask the Tribunal, as to this vessel, to find and certify as they have been asked to find and certify as to the Sumter, the Nashville, the Florida, the Alabama, the Georgia, and the Tallahassee.

The Shenandoah.

The Shenandoah.

The British steamer Sea King, a merchant vessel which had belonged to a Bombay Company, and had been employed in the East India trade,† was "a long rakish vessel of seven hundred and ninety tons register, with an auxiliary engine of two hundred and twenty nominal horse-power, with which she was capable of steaming ten knots an hour. She was the handiwork of celebrated builders on the River Clyde, in Scotland, and had made one voyage to New Zealand as a transport for British troops, when she proved herself one of the fastest vessels afloat, her log showing at times over three hundred and twenty miles in twenty-four hours."‡

In the year 1863, before the voyage to New Zealand, Mr. Dudley had seen her at Glasgow, and had reported her as a most likely steamer for the purposes of a privateer.§

On the 20th of September, in the year 1864, she was sold in London to Richard Wright, of Liverpool, a British subject, and the father-in-lay of Mr. Prioleau, of South Carolina, the managing partner in the house of Fraser, Trenholm, and Co.,‖ and the transfer was registered the same day.

The United States assert that the notorious connection of the firm of Fraser, Trenholm, and Co. with the insurgents, and their repeated violations of the sovereignty of Great Britain in purchasing, constructing, equipping, arming, and contracting for vessels of war to be used in carrying on hostilities against the United States, ought by that time to have made them objects of suspicion to every British official, connected with the construction or the transfer of steamers capable of being adapted to warlike use. The acquisition, by a near connection of a member of their firm, of a fast-going steamer, capable of being so converted, and the proposition to send her to sea in ballast, with nothing on board but two mounted guns and a supply of provisions and coal, ought of itself to have attracted the attention of the British officials. The omission to take notice of the fact is a proof of want of the due diligence required by the Treaty. Under the circumstances, it would have been the exercise of but the most ordinary diligence to supervise the transfers of this class of vessels in the Government records, and to follow up so palpable a clue as was given in the case of the Sea King.

On the 7th of October, Wright gave a power of attorney to one Corbett to "sell

* Manuscript diary in the Department of State.
† Bernard's British Neutrality, page 359.
‡ Cruize of the Shenandoah, page 9.
§ Dudley to Seward and Morse to Seward, Vol. VI, page 555.
‖ Dudley to Seward, Vol. III, page 319; Vol. VI, page 560.

Insurgent Cruisers: The Shenandoah.

her at any time within six months for a sum not less than 45,000*l.* sterling."[1] Corbett was an Englishman who had commanded the Douglas, afterward known as the Margaret and Jessie, one of the kaleidoscopic blockade-runners owned by the insurgents and carrying the British flag.

The next day the Sea King cleared for Bombay, and sailed "with a crew of forty-seven men."[2] Before sailing, while she "lay in the basin," she "took in coal and provisions sufficient for a twelvemonth's cruise."[3] She "had two 18-pounders mounted on the decks," which were the guns generally used in bringing vessels to.[4] "She was scarcely clear of the ground when a telegram was flashed to Liverpool, advising the Confederate agent at that port" that she had sailed;[5] and about 8 or 9 o'clock that evening a screw-steamer, called the Laurel, "nearly new-built, very strong, and admirably adapted for a privateer,"[6] left Liverpool, clearing for Matamoras, *viâ* Nassau, taking a "score or more of natives of the South, who had staked life and fortune on the hazard of a desperate game," among whom were "several old Confederate States' navy officers, who had served on board the Sumter, Alabama, and Georgia."[7] The Laurel took out as cargo "cases marked as machinery, but in reality containing guns and gun-carriages, such as are used in war vessels."[8] Mr. Dudley, the Consul at Liverpool, from the number of guns and the number of men, drew the correct conclusion that they were shipped in order to be transferred to some other vessel.[9] The officers in Her Majesty's service, by the exercise of due diligence, might have arrived at the same conclusion, and might have detained both ships.

The appointed place of meeting was the harbour of Funchal, in the island of Madeira. The Laurel arrived there two days in advance of the Sea King.[10] The latter vessel had enlisted its crew "for a voyage to Bombay or any port of the Indian Ocean, China Seas, or Japan, for a term not to exceed two years."[11] She "went down the English Channel under steam and sail, and when off Land's End she was put under reefed canvas," and so continued to Madeira. She was fully rigged for sailing, and her steam was intended only as an auxiliary.

The Sea King arrived off Funchal the night of the 19th.[12] The Laurel, on the morning of the 20th, came out to meet her, "with a full head of steam on;" signalled her to round the Desertas, a barren rocky island lying near Madeira; and proceeded to the place of rendezvous, the Sea King following the wake.[13]

"Tackles were at once got aloft on both vessels, and they commenced operations by first transferring from the Laurel to the Sea King the heavy guns." "At the expiration of thirty-six hours the transfer was effected, and the munitions of war, clothing, and stores, with which the Laurel had been laden, were piled in utter confusion on the decks and in the hold of the Sea King, which was to bear that name no more."[14] They "took in from the Laurel eight cannon, viz., six large and two small, with their carriages (the guns were called 68-pounders); a quantity of powder, muskets, pistols, shot, and shell; clothing, and a quantity of other stores, and also a quantity of coals."[15]

Corbett then came forward and announced a pretended sale of the vessel, (the real sale having taken place in London), and tried to induce the men who had enlisted to sail in the Sea King to continue their contract in the Shenandoah. The conduct of this person was so palpably a violation of the Foreign Enlistment Act that the British Consul at Funchal sent him home as a prisoner, accompanied by depositions to prove his guilt.[16] Captain Waddell, the new commander in the place of Corbett, made a speech, "which was received with but little enthusiasm from the majority of those who listened to him."[17] "Out of eighty, twenty-three only cast in their lots with the new

[1] Dudley to Seward, Vol. III, page 319.
[2] Dudley to Seward, Vol. III, page 319; Vol. VI, page 560.
[3] Cruize of the Shenandoah, page 10.
[4] Temple's affidavit, Vol. III, page 478; Vol. VI, page 709.
[5] Cruize of the Shenandoah, page 11.
[6] Dudley to Adams, Vol. III, page 316; Vol. VI, page 556.
[7] Cruize of the Shenandoah, page 16. See also Vol. III, page 318.
[8] Dudley to Seward, Vol. III, page 317; Vol. VI, page 556.
[9] Dudley to Seward, Vol. III, page 318; Vol. VI, page 557.
[10] Cruize of the Shenandoah, page 19.
[11] Ellison's affidavit, Vol. III, page 359; Vol. VI, page 580.
[12] Harris' affidavit, Vol. III, page 363; Vol. VI, page 584.
[13] Cruize of the Shenandoah, pp. 19–20.
[14] Cruize of the Shenandoah, page 21.
[15] Vol. III, page 363; Vol. VI, page 580. See also the other affidavits which follow this.
[16] Vol. VI, page 572.
[17] Cruize of the Shenandoah, page 22.

cruiser."* When the Shenandoah left the Laurel her "officers and crew only numbered forty-two souls, less than half her regular complement."† This obliged her "to depend upon her auxiliary engine."

When the news of these proceedings was fully known in London, Mr. Adams brought the subject to the notice of Earl Russell.‡ In a subsequent note he referred to this fact in the following language.§

"On the 18th November, 1864, I had the honour to transmit to your Lordship certain evidence which went to show, that on the 8th of October preceding, a steamer had been dispatched, under the British flag, from London, called the Sea King, with a view to meet another steamer, called the Laurel, likewise bearing that flag, dispatched from Liverpool on the 9th of the same month, at some point near the island of Madeira. These vessels were at the time of sailing equipped and manned by British subjects; yet they were sent out with arms, munitions of war, supplies, officers, and enlisted men, for the purpose of initiating a hostile enterprise to the people of the United States, with whom Great Britain was at the time under solemn obligations to preserve the peace.

"It further appears that, on or about the 18th of the same month, these vessels met at the place agreed upon, and there the British commander of the Sea King made a private transfer of the vessel to a person of whom he then declared to the crew his knowledge that he was about to embark on an expedition of the kind described. Thus knowing its nature, he nevertheless went on to urge these seamen, being British subjects themselves, to enlist as members of it.

"It is also clear that a transfer then took place from the British bark Laurel of the arms of every kind with which she was laden, for this same object; and, lastly, of a number of persons, some calling themselves officers, who had been brought from Liverpool expressly to take part in the enterprise. Of these last a considerable portion consisted of the very same persons, many of them British subjects, who had been rescued from the waves by British intervention at the moment when they had surrendered from the sinking Alabama, the previous history of which is but too well known to your Lordship.

"Thus equipped, fitted out, and armed from Great Britain, the successor to the destroyed corsair, now assuming the name of the Shenandoah, though in no other respects changing its British character, addressed itself at once to the work for which it had been intended. At no time in her later career has she ever reached a port of the country which her commander has pretended to represent. At no instance has she earned any national characteristic other than that with which she started from Great Britain. She has thus far roamed over the ocean, receiving her sole protection against the consequences of the most piratical acts from the gift of a nominal title which Great Britain first bestowed upon her contrivers, and then recognized as legitimating their successful fraud."

It is not necessary to follow in detail the cruise of the Shenandoah from Madeira to Melbourne. It is enough to say that it lasted ninety days,‖ during which time several vessels of the merchant marine of the United States were destroyed, with valuable cargoes. On the 25th of January, 1865, she "dropped anchor off Sandridge, a small town about two miles from Melbourne."¶

"The November mail from Europe, which arrived at Melbourne about the middle of January, had brought the news that the Sea King had left England with the intention of being converted into a war vessel to cruise against the commerce of the United States."** Suspicions were at once aroused that the newly arrived man-of-war under the insurgent flag was no other than the Sea King; suspicions which were confirmed by the statements of the prisoners from the captured vessels, and by others."††

The Consul of the United States appears to have acted with both courtesy and vigour. He placed before the authorities all the information in his possession tending to show the illegal origin of the vessel, and the liabilities which she was imposing upon Great Britain by her depredations on the commerce of the United States.‡‡ He told the Governor that the "Shenandoah, alias Sea King," had never "entered a port of the

* Cruize of the Shenandoah, page 23.
† Cruize of the Shenandoah, page 24.
‡ Adams to Russell, Vol. III, page 323.
§ Same to same, Vol. III, page 377.
‖ Cruize of the Shenandoah, page 93.
¶ Cruize of the Shenandoah, page 94.
** Blanchard to Seward, Vol. III, page 384; Vol. VI, page 588.
†† See depositions in Vol. III, on pp. 399, 401, 402, 405, 407, and 417. The same depositions may be found in Vol. VI. This point appears to have been settled beyond doubt. See extract from Melbourne Herald, Vol. VI, page 650.
‡‡ See Mr. Blanchard's despatch to Mr. Seward, Vol. III, page 384.

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so-styled Confederate States for the purposes of naturalization, and consequently was not entitled to belligerent rights;"[1] and that the table-service, plate, &c., on the vessel all bore the mark of "Sea King." He earnestly urged that "after the severest scrutiny it should be determined if this vessel and crew are entitled to the rights of belligerency, or whether the vessel should not be detained until the facts can be duly investigated."[2] When he found that, in spite of his remonstrances, and of the proof of her character, it had been decided that the Shenandoah should be repaired and should be allowed to take in supplies and coals, he protested "in behalf of his Government against the aid, comfort, and refuge" extended to her.[3] When he was informed that the Governor had come to the decision that "whatever may be the previous history of the Shenandoah, the Government of the Colony is bound to treat her as a ship of war belonging to a belligerent Power," he protested afresh, and notified the Governor "that the United States will claim indemnity for the damages already done to its shipping by said vessel, and also which may hereafter be committed if allowed to depart from this port."[4] He placed in the hands of the Attorney-General conclusive "evidence to establish that the Shenandoah is in fact, the Sea King."[5] When it came to his knowledge that Waddell was enlisting a crew in Melbourne for the Shenandoah, he put the proof of it at once into the hands of the Governor.[6] When he heard that she was taking coal on board he communicated that fact also.[7] From the beginning of the visit of the Shenandoah at Melbourne to the hour of her departure, this officer was constant in his vigilance and in his efforts to aid the British authorities in the performance of their duties, as the Representatives of a neutral nation.

As soon as she arrived, almost before her anchor was dropped, her commander wrote to the Governor for permission to "make the necessary repairs and obtain a supply of coals."[8]

This letter was officially answered the next day, after the twenty-four hours allowed by the Instructions of January 1862 for his stay had expired. He was told that directions had been given to enable him to make the necessary repairs and to coal his vessel, and he was asked, at his earliest convenience, to intimate the nature and extent of his requirements as regards repairs and supplies.[9] This was the official answer. The real answer had been given the previous night to Waddell's messenger, who was dispatched on shore "as soon as practicable the afternoon of arrival, to confer with the authorities and obtain permission for the ship to remain and procure some 'necessary repairs.' He returned *before midnight, having succeeded in his mission.*"[10]

Two days were taken to reply to the question as to the nature and extent of the needed repairs and supplies. Waddell then stated, as a reason why he could not yet report, that the mechanics had not yet reported to him. He spoke generally about the condition of his propeller shaft, and the bearings under water, and he added, "*the other repairs are progressing rapidly.*"[11] It thus appears that he had been at that time three days in port, had made no official statement of the supplies or the necessary repairs, and that he had a force at work upon his vessel, without any report to the Governor showing the necessity.

The next day he was asked to furnish a list of supplies required for the immediate use of his vessel.[12] He appears to have furnished such a statement, but it has not been printed in any document within the control of the United States. As the list is in the possession of Great Britain, it will doubtless be produced, if it tends to release that Government from responsibility.

On the following day, being the fifth day after he arrived in port, the fourth day after he received permission to make his repairs, and the third or fourth day after the repairs were commenced, he reported to the Governor that the lining of the outer sternback (probably meaning the outer sternbush) was entirely gone, and that in order to replace it the Shenandoah must go into the Government slip for about ten days.[13]

[1] Vol. III, page 394; Vol. VI, page 598.
[2] Blanchard to Darling, Vol. III, page 395; Vol. VI, page 598.
[3] Blanchard to Darling, Vol. III, page 397; Vol. VI, page 600.
[4] Blanchard to Darling, Vol. III, page 398; Vol. VI, page 602.
[5] Vol. III, pp. 403, 444, 405, and 407. See also Vol. VI.
[6] Vol. III, pp. 414, 420, 423, 427, 428. See also Vol. VI.
[7] Vol. III, page 425; Vol. VI, page 630.
[8] Waddell to Darling, Vol. V, page 599.
[9] Francis to Waddell, Vol. V, page 599. Vol, VI, page 639.
[10] Cruize of the Shenandoah, page 97.
[11] Vol. V, page 600; Vol. VI, page 640.
[12] Francis to Waddell, Vol. VI, page 600; Vol. VI, page 641.
[13] Waddell to the Commissioner of Trade, Vol. V, page 600; Vol. VI, page 641.

On the 1st of February the Governor assented to the making of these repairs* and the time named for them.

On the 7th of February, through his Secretary, he called upon Captain Waddell "to name the day when he would be prepared to proceed to sea."† Waddell said that he could not name a day; and he gives excuses why his vessel was not yet on the slip; a fact which furnishes the evident reason for the letter of the Governor's Secretary.‡

On the 14th of February, a week later, inquiry is again made whether he is "in a position to state more definitely when the Shenandoah will be in a position to proceed to sea."†

The reply shows that the Shenandoah was then on the slip, and was to be launched the next day. He thought he could proceed to sea by the 19th, though he had yet to take in all his stores and coals.‖

The next correspondence between Waddell and the Governor's Secretary furnishes the solution of the delay in the original report upon the repairs, the delay in the getting the vessel into the slip, the delay in getting her out of it, and the unreasonable time required "to take in stores, coals, and to swing the ship." During all this time Waddell had been enlisting men for the Shenandoah out of the streets of Melbourne, and had protracted his repairs as an excuse for delay, while he filled up the thin ranks of his crew.

The arrival of this vessel at Melbourne had produced a profound sensation. An inquiry was made of the Government in the Legislature to know if Her Majesty's Proclamation had not been violated by the Shenandoah. The member making the inquiry called attention to the news of the departure of the Sea King from London for the purpose of being converted into a cruizer, and he showed that the Sea King and the Shenandoah were the same vessel. The House was opposed to him, and he was called to order as he did this. The Chief Secretary replied, not so much calling in question the identity of the Sea King with the Shenandoah, as doubting the propriety of accepting the fact on the evidence quoted by the former speaker; and he added that, "in dealing with this vessel, they had not only to consider the terms of the Proclamation referred to, *but also the confidential instructions from the Home Government.*"¶

Here the United States learned for the first time that, in addition to the published instructions which were made known to the world, there were private and confidential and perhaps conflicting instructions on this subject. It is beyond their power to furnish to this Tribunal copies of these confidential instructions. Should their production be deemed important by Her Majesty's Government, or should they tend to relieve Great Britain from liability to the United States, they will, undoubtedly, be furnished to the Tribunal.

The Consul of the United States at Melbourne penetrated the reasons for Waddell's delay, and supplied the Colonial Authorities with evidence that men were being enlisted at Melbourne for the Shenandoah. His first letter to the Governor on this subject was dated the 10th of February. In it he called attention "to the shipment of men on board said Shenandoah in this port."** Again, on the 14th of February, he transmitted to the Governor further proof on the same subject.††

The affidavits furnished by the Consul showed that an enlistment on a large scale was going on. The affidavit of Wicke, for instance, spoke of a cook named "Charley," and ten men;‡‡ the affidavit of Behucke, of "about ten men concealed in said Shenandoah."§§

The authorities proceeded against "Charley" only. They carefully let alone Captain Waddell and his officers, who had been violating Her Majesty's Proclamation and the laws of the Empire,‖‖ and they aimed the thunders of the law against an

* Francis to Waddell, Vol. V, page 602; Vol, VI, page 644.
† Francis to Waddell, Vol. V, page 602; Vol. VI, page 643.
‡ Waddell to Francis, Vol. V, page 602; Vol. VI, page 644.
§ Francis to Waddell, Vol. V, page 602; Vol. VI, page 644.
‖ Waddell to Francis, Vol. V, page 602; Vol. VI, page 644.
¶ Vol. V, page 611; Vol. VI, page 660, *et seq.* It was in consequence of these doubts expressed by the Chief Secretary that the Consul furnished the evidence of the identity of the two vessels. Vol. III, page 386; Vol. VI, page 590.
** Blanchard to Darling, Vol. III, page 420; Vol. VI, page 625.
†† Blanchard to Darling, Vol. III, page 414; Vol. VI, page 619
‡‡ Vol. III, page 421; Vol. VI, page 625.
§§ Vol. III, page 422; Vol. VI, page 626.
‖‖ The second section of the Foreign Enlistment Act of 1819 made it illegal to procure any person to engage to enlist as a sailor in sea service under any person assuming to exercise any powers of government, or to agree to go from any part of Her Majesty's dominions for the purpose of being so enlisted; and persons committing that offence were to be deemed guilty of a misdemeanor, and to be punished, on conviction, by fine or imprison-

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assistant cook. When the officer arrived at the vessel to serve the warrant for Charley's arrest, he was informed that no such person was on board. On expressing a wish to ascertain this fact for himself, his request was refused.* The next day he went again, and Captain Waddell stated, on his honour and faith as a gentleman and an officer, that there was no such person as Charley on board."† On the evening of the same day Charley and three other men who had been enlisted in Melbourne were arrested as they left the Shenandoah by the Water Police,‡ thus showing that they must have been there all the while.

In consequence of this, the permission to make repairs was suspended; but it was soon restored. The reason given for the restoration was that, Charley being taken, Waddell was "in a position to say, as commanding officer of the ship, that there were no persons on board except those whose names are on the shipping articles, and that no one has been enlisted in the service of the Confederate States since arrival in this port."§ It does not appear that Waddell made any such commitment; on the contrary, he said that he considered "the tone of the letter remarkably disrespectful and insulting."

The Melbourne authorities did not insist upon having such an assurance. The Secretary of the Governor had said that Waddell was in a position to give the assurance; that was enough. The Chief Secretary said in the Assembly, speaking of the enlistment of "Charley," "it appears to me and to the Government that if anything can be a violation of strict neutrality, this is it;"‖ but, he added, in a few moments (his attention being called to the fact that there were still persons on board who had joined the ship at Melbourne), "The particular warrant that was issued for this particular individual (Charley) was satisfied; and if further warrants are issued for other persons who may be on board, *the position of the Government will be altered.* It may be that there are other persons on board."¶

There were other persons on board whose presence was a violation of British neutrality, and whose exposure would "alter the position of the Government"—some fifty in all; but no warrant was issued, and "the position of the Government" was not "altered." The Shenandoah took on board her coal (three hundred tons in all) and her supplies, the character of which is not known to the United States, for the reasons already given.

The United States' Consul to the last did his duty. On the 17th, the day before she sailed, he informed the Governor that "the Shenandoah was taking in three hundred tons of coal, in addition to the quantity she had on board when she came into this port—about four hundred tons; and added, "The Shenandoah is a full-rigged sailing-vessel; steam is only auxiliary with her; and I cannot believe your Excellency is aware of the large amount of coal now being furnished said vessel."** This coal was dispatched from Liverpool in a vessel called the John Fraser. The earmarks were on the transaction in the very name of the transport.

On the same day the Consul also lodged with the Governor the affidavit of one Andrew Forbes, to show that six persons, residents of Melbourne, whom he named, were to join the Shenandoah outside, she being then ready to sail. As time was of importance, and a day's delay might be too late, the Consul went with his witnesses to the office of the Crown Solicitor, to whom the Attorney-General had previously directed him to communicate such information. He found that officer leaving for his dinner. He told him "his business was urgent," and that he had "come as the Representative of the United States to lay before him, as Crown Solicitor, the evidence that a large number of men were about violating the Neutrality Laws."†† The Solicitor said he must go to his dinner, and passed on. The Consul then went to several other officers, in order to secure immediate action on his complaint. Among others, he went to the Attorney-General, who sent him to another Solicitor; but he could get no one to attend to it, and the Shenandoah left early in the morning of the 18th without further British interference.

The attention of the Tribunal of Arbitration is invited to the fact that a sworn list

ment, or both. It would be difficult to describe what Captain Waddell actually did at Melbourne in more accurate language than this.

* Vol. V, page 618; Vol. VI, page 665,
† Vol. V, page 618; Vol. VI, page 665.
‡ Francis to Waddell, Vol. V, page 605; Vol. VI, page 647.
§ *Ibid.*, Vol. V, page 605.
‖ Vol. V, page 619; Vol. VI, page 666.
¶ Vol. V, pp. 620 and 667.
** Blanchard to Darling, Vol. III, pp. 425–426; Vol. VI, page 630.
†† Lord to Blanchard, Vol. III, page 429; Vol. VI, page 635.

of the crew of the Shenandoah is attached to an affidavit made in Liverpool by one Temple ten months after the vessel left Melbourne.[1] Forbes in his affidavit, which was submitted to the Governor and laid before the Attorney-General, gave the names of five persons who he had reason to believe were about to join the said vessel from Melbourne. Temple's affidavit shows that at least three of those persons did join and did serve, viz.: "Robert Dunning, an Englishman, captain of the foretop;[2] Thomas Evans, Welchman; and William Green,[3] an Englishman."[4] This corroborative, independent piece of testimony establishes the truthfulness of Forbe's affidavit. This affidavit, so summarily rejected by the Crown Solicitor, was the specific evidence of the commission of a crime which Her Majesty's Government required to be furnished by the United States. When produced the British authorities declined to act upon it.

The United States assert, without fear of contradiction, that there was no time during the stay of the Shenandoah in Melbourne, when it was not notorious that she was procuring recruits. She went there for that purpose. Her effective power as a man-of-war depended entirely upon her success in obtaining a new crew. When she left the Laurel she had but twenty-three men besides her officers. With every capture between there and Melbourne great efforts were made to induce the captured seamen to enlist; and those who would not enlist were compelled to work as sailors in order to avoid being put in irons. The author of the "Cruise of the Shenandoah" says that fourteen were enlisted in this way—ten from the Alina and the Godfrey,[5] two from the Susan,[6] and two from the Stacey.[7] Temple in his affidavit gives the names of three from the Alina, five from the Godfrey, one from the Susan, two from the Stacey, and one from the Edward.[8] It is probable that Temple's statement is correct. Of the twelve whom he names, two appear to have left the vessel at Melbourne, viz.: Bruce, of the Alina; and Williams, of the Godfrey. It would therefore appear that, had the Shenandoah received no recruitment of men at Melbourne, her force on leaving would have been thirty-three marines, firemen, and ordinary seamen. One officer and two petty officers were discharged there, which reduced the number of officers to twenty, and her whole force to fifty-three. She was a full-rigged ship, 220 feet in length and 35 feet beam, and carried royal-studding sails, and required double or treble that number of men to make her effective as a man-of-war.[9] The Tribunal will see how important it was to recruit men at Melbourne.

She took in there, according to the account given by the author of the "Cruise of the Shenandoah," forty-five men.[10] Temple, in his affidavit, gives the names of forty-three, divided as follows: one officer, twelve petty officers, twenty seamen, seven firemen, and three marines. The United States complain of this act, not alone as a technical violation of the duties as a neutral, as laid down in the second rule of the Treaty, but as great injury to them, from which flowed the subsequent damages to their commerce from the Shenandoah. This recruitment might have been stopped by the exercise of the most ordinary diligence. It ought to have been stopped after his letter of the 14th. The authorities should have detained the Shenandoah on the information he communicated on the 17th. Most of the men went on board that night. It was a great negligence not to have prevented this. When the Shenandoah sailed on the morning of the 18th, the whole community knew that she had more than doubled her force in Melbourne. The newspapers of the next day were full of it. The Herald said: "Rumours are afloat that the Shenandoah shipped or received on board somewhere about eighty men."[11] The Argus said: "It is not to be denied that during Friday night a large number of men found their way on board the Shenandoah, and did not return on shore again."[12] And the Age said: "It is currently reported that she shipped some eighty men."[13] It is not probable—it may indeed be said to be most improbable—that a shipment of half that number of men could have been made without complicity of the authorities. Mr. Mountague Bernard intimates that they could not have come there without the knowledge of Captain Waddell."[14] A similar train of

[1] Vol. III, page 477; Vol. VI, page 709.
[2] Vol. III, page 488; Vol. VI, page 719.
[3] Vol. III, page 489; Vol. VI, page 727.
[4] Vol. III, pp. 489–490; Vol. VI, page 721.
[5] Cruize of the Shenandoah, page 42.
[6] *Ibid.*, page 43.
[7] *Ibid.*, page 47.
[8] Vol. III, pp. 487–491; Vol. VI, page 718, *et seq.*
[9] Cruize of the Shenandoah, page 23.
[10] *Ibid.*, page 113.
[11] Vol. III, page 435; Vol. VI, page 683.
[12] Vol. III, page 436; Vol VI, page 684.
[13] Vol. III, page 436; Vol. VI, page 685.
[14] Bernard's Neutrality, page 434.

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reasoning will convince the Tribunal of Arbitration that the least measure of "diligence" would have discovered the fact to the local authorities.

The permitting a shipment of three hundred tons of coal at Melbourne was also a violation of the duties of a neutral. The Shenandoah was a sailing-vessel. Her steam power was auxiliary. From early in December until two days before her arrival at Melbourne, some seven weeks in all,* she was under sail, without using her steam; she went from Land's End to Madeira in the same way.† She took on board, when she left London, a supply of coal for twelve months. Four hundred tons remained when she reached Melbourne. She required no fresh supply to enable her to return to an insurgent port, and she sought it only for the purpose of cruizing against the commerce of the United States, thus making Melbourne a base of the insurgent naval operations. The United States are of the opinion that it was a breach of the duties of an impartial neutral to permit unlimited supplies of coal to be furnished to the Shenandoah in a British port, under circumstances similar to those in which like supplies had been refused to the vessels of the United States; and that it was a still greater violation to permit the supply to be furnished from the insurgent transport John Fraser, dispatched from Liverpool for that purpose, while the United States were forbidden to supply their vessels in like manner.

When the Shenandoah left London she took general supplies for a year; yet she was allowed to replenish at Melbourne within less than six months from the time of leaving London. It must be concluded from the declarations of the author of the cruize of the Shenandoah, that when this was done she had enough supplies on board for the subsistence of the crew to the nearest insurgent port. The addition obtained at Melbourne enabled her to continue her hostile cruize, and to light up the icy seas of the north with the fires of American vessels, long after the military resistance to the United States had ceased.

The United States further insist that when the authorities at Melbourne permitted the Shenandoah to make repairs to her machinery in that port, a still greater violation of the duties of Great Britain as a neutral was committed.

It has just been shown that this vessel was under no necessity of using her steam; that she had gone to Madeira under sail; that she had come from the Cape of Good Hope to Melbourne under sail. For many days before arriving at Melbourne "a heavy and continuous gale" prevailed.‡ At its height it was "sublime beyond description," and the Shenandoah "drove before it at the rate of eleven knots an hour, under close-reefed topsails and reefed foresail."§ Yet the author of the cruize of the Shenandoah makes no mention of any injury to the vessel, or of any leak, and there is nothing to show that the hull needed repairs, or that anything was done to it except that "a gang of caulkers were procured and went to work upon the decks with pitch and oakum."‖ The United States are convinced that no other repairs were necessary for the hull, and that if the departure of the vessel was delayed for the ostensible purpose of further repairs to the vessel itself, the pretence was made solely for the purpose of delay.

The repairs to the machinery, as distinguished from the hull, were made with the object of enabling the Shenandoah to go to the Arctic Ocean, there to destroy the whalers of the United States, in accordance with Bullock's instructions to Waddell before he left Liverpool.¶ It is evident, not only from the absence of any mention of injury to the hull by the author of the Cruise of the Shenandoah, but also from the statement of experts of the repairs which the machinery required, that the hull was sound and seaworthy, and that the Shenandoah as a sailing vessel, without steam, could at once have proceeded to sea, and have made her way to the insurgent ports.** When Captain Boggs, of the United States' Navy, two months later (after the surrender of Lee), asked permission to remain at Barbados "a few days, for the purpose of overhauling the piston and engine," he was required, as a preliminary to the permission, to "give a definite assurance of his inability to proceed to sea."†† As a man of honour and truth he could not do this, and he went to sea without his repairs. The same rule

* Cruize of the Shenandoah, pp 63–94.
† Schutcher's affidavit, Vol. III, page 365; Vol. VI, page 586.
‡ Cruize of the Shenandoah, page 66.
§ *Ibid.*, page 67.
‖ *Ibid.*, page 104.
¶ Vol. III, page 461; Vol. VI, page 705.
** It is true that the insurgents had no ports at that time which the Shenandoah could enter. Wilmington the last of their ports, was closed by the Capture of Fort Fisher. This, however, was an additional reason why the Shenandoah should not have been allowed to leave Melbourne, carrying a flag that had no port to receive it. See the correspondence between the United States and Portugal referred to *ante*, page 137.
†† Walker to Boggs; Vol. VI, pages 178-9.

applied to the Shenandoah would have produced the same result, supposing Captain Waddell to have been as honourable and as truthful a man as Captain Boggs.

Twenty-four hours elapsed before any questions were put to Captain Waddell by the local authorities. Then he was told to state what repairs he wanted, in order that the Governor might know how long he was to enjoy the hospitalities of the port. He delayed for two days longer to answer this question, going on, however, in the meanwhile with some of his repairs. He then reported the repairs already begun as "progressing rapidly," and added that Langland Brothers and Co. were to examine the propeller and bracings (probably a misprint for "bearings") under water; that a diver had that day examined them; and added that "so soon as Messrs. Langland Brothers and Co. should hand in their Report" he would inclose it.

Two days later, on the 30th, Langland Brothers and Co. made their Report, "after inspection by the diver," saying that "the lining of the outer sternback," (probably a misprint for "sternbush") is entirely gone, and will have to be replaced; that "three days will elapse before she is slipped," and that they "will not be able to accomplish the repairs within ten days from date." *

The Tribunal will observe that it was proposed that two kinds of repairs should be made.

The first class did not require the vessel to go into the slip. These included the caulking referred to by the author of the Cruise of the Shenandoah,† and perhaps also repairs of a general character, which all steam machinery requires after having been run for any length of time, such as refitting of brasses, packing stuffing-boxes, examining and readjusting of working parts, &c. All these repairs could have gone on simultaneously. Such coal as might be allowed within the construction of the instructions of January 31, 1862, as those instructions were applied to the vessels of the United States, and such supplies as were legally permitted, could also be taken on, and the vessel could be ready to go to sea again in from two to four days after her arrival in port. Or, should it be necessary for the vessel to go into a slip for the purpose of repairing the propeller, this class of repairs might also be going on in the slip at the same time with the others.

The other class of repairs were those which Langland Brothers and Co. were to report upon—repair to the propeller. It appears from the report made by these mechanics on the 30th of January, that they founded their estimate upon the report of a diver. Mechanics ordinarily have to depend upon such a report, and to found their estimates upon it. The examination of the propeller of a screw-steamer, and of its bearings below the water-line, is a simple matter, and takes but a short time. It is confined to the stern of the vessel. A practised expert can go down, satisfy himself of the extent of the injury, and return and report in a few minutes. Had the Governor treated Captain Waddell as Captain Boggs was treated, the examination could easily have been made on the morning of the 26th, and the whole extent of the injury could have been reported to the Governor on the afternoon of the same day within twenty-four hours after the arrival of the vessel in port. Captain Waddell, however, was not required to move so rapidly. He did not send his diver down until the 28th; he did not get the official report of his mechanics until the 30th. Thus he spent five days in doing what could have been done in five hours. There must have been a motive for that delay; the United States find that motive in his necessity to enlist a crew.

The Tribunal will also observe that his own report on the 28th of the extent of his injuries differs from that made by his mechanics on the 30th. He reported that the "composition castings of the propeller shaft were entirely gone, and the bracings (probably a misprint for 'bearings') under water were in the same condition." This was a more serious injury than the one reported by his mechanics two days later, namely—the necessity of giving the shaft a new outer sternbush. The latter would, it is true, require the docking of the ship to admit of the removal of the shaft. But when the ship was once in the slip, the propeller could be easily hoisted, being a movable one; ‡ and then the renewal of the lignum-vitæ lining, technically known as the sternbush, the only repairs which the experts reported to be necessary, could be completed two or three days after the ship could be on the slip. If the vessel was necessarily longer on the slip she must have received more repairs than are described in the official report of the Langlands, which embraced all for which the permission was granted.

It therefore appears that, on the supposition that the authorities at Melbourne

* Waddell to Francis, Vol. V, page 600; Vol. VI, page 640.
† Cruize of the Shenandoah, page 77.
‡ Wilson's affidavit, Vol. III, page 325; Vol. VI, page 566.

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could, under the circumstances, without violating the duty of Great Britain as a neutral, permit the repairs reported by Langland Brothers and Co. to be made, the Shenandoah should have gone to sea in ten days after her arrival. This estimate gives the extreme time for every requisite step, viz: one calendar day for the examination of the diver, excluding the day of arrival; three days (the estimate of the Langlands) for putting the vessel in the slip; three days for the repairs by the Langlands; one day for getting her out of the slip; and two days for reloading and getting to sea, which was the time actually taken; but, as during this time she unwarrantably took on board three hundred tons of coal, this is probably too large an estimate. Instead of requiring these repairs to be completed in ten days, the Melbourne authorities allowed the Shenandoah to stay there twenty-four days. The extra fourteen days were occupied in the recruitment of the forty-three men whom she carried away with her. It is difficult, under the circumstances, to resist the conclusion that the repairs were dawdled along for the purpose of securing the recruits, and that the authorities, to say the least, shut their eyes while this was going on; especially if it be true, as said by Temple, that the Government engineer was on board three or four times a day while they were undergoing repairs, and assisted them with his opinion and advice.* It is fair to say that this fact is doubted by the Governor of the Colony.† If the Government engineer was not there, however, he should have been, in order to see that Waddell was not violating British neutrality.

Leaving Melbourne, the Shenandoah went through the Pacific Ocean to the Arctic Seas, via Behring's Straits, under the instructions issued by Bullock, in Liverpool, for the purpose of destroying the whalers of the United States. How successful she was in her attacks upon these intrepid and daring navigators is shown by the long list of captured vessels, for whose destruction the United States claim compensation.

On the cruize to those seas she used her sails only. After arrival there she commenced steaming on the 25th of June, and "from that time till she left the Arctic Seas she made comparatively little use of her sails."‡ Many of the most valuable vessels were destroyed after that time. Temple names, in his affidavit, fifteen that were destroyed after Waddell knew of the suppression of the insurrection.§ Bullock wrote him a letter, instructing him "to desist from any further destruction of United States' property,"‖ and Earl Russell undertook to send the letter "through the British Consuls at the ports were the ship may be expected." It was not until the 17th day of October, 1865, that she ceased to be officially registered as a British vessel. Waddell arrived at Liverpool with the Shenandoah on the 6th of the following November, and wrote Earl Russell that the destructions committed on the 28th of June—when Temple said that he knew of the surrender of Lee—were committed "in ignorance of the obliteration of the Government." He said that he received his first intelligence on the 2nd of August. The author of the Cruize of the Shenandoah says that they received, on the 28th of June, while burning the whalers, the news of the assassination of Mr. Lincoln.¶ This event took place a week after surrender of Lee. The affidavits of Temple and Nye in Vol. VII will indicate still earlier knowledge. It would seem, therefore, that Waddell's statements to Earl Russell could not have been correct.

"The re-appearance of the Shenandoah in British waters" was regarded as "an untoward and unwelcome event." The Times reminded the public that "in a certain sense it was doubtless true that the Shenandoah was built and manned in fraud of British neutrality."** Great Britain dealt with the "untoward" question as it had dealt with others during the contest—by evading it. The vessel was delivered to the United States. The men who had been preying upon the commerce of the United States for months without a semblance of authority behind them, most of whom were British subjects, with unmistakable British bearing and speech, were called before an officer of the British Navy to be examined as to their nationality, they understanding in advance that it was a crime for British subjects to have served on the Shenandoah. "Each one stated that he belonged to one or the other of the States of America,"†† and they were discharged without further inquiry.

* Temple's affidavit, Vol. III, page 481; Vol. V, page 712.
† Darling to Cardwell, Vol. III, page 506.
‡ Cruize of the Shenandoah, page 187.
§ Vol. III, pp. 482–483; Vol. VI, page 709, *et seq.* This statement by Temple is confirmed by Hathaway's affidavit, Vol. VII, page 95.
‖ Vol. III, page 458; Vol. VI, page 698.
¶ Cruize of the Shenandoah, page 206.
** London Times, November 8, 1865; Vol. III, page 449.
†† Check to Paynter, Vol. III, page 505.

On the 28th of December, 1865, Mr. Adams, commending upon these proceedings, wrote to Earl Clarendon as follows:* "I trust it be made to appear—

"1. That the Sea King did depart from a British port armed with all the means she ever had occasion to use in the course of her cruize against the commerce of the United States; and that no inconsiderable portion of her hostile career was passed while she was still registered as a British vessel, with a British owner, on the official records of the kingdom.

"2. That the commander had been made fully aware of the suppression of the rebellion the very day before he committed a series of outrages on innocent, industrious, and unarmed citizens of the United States, in the Sea of Okhotsk.

"3. The list of the crew, with all the particulars attending the sources from which the persons were drawn, is believed to be so far substantially correct so as to set at rest the pretence of the officer sent on board that there were no British subjects belonging to the vessel."

The United States confidently insist that they have incontestably established the points there claimed by Mr. Adams; and further,

"4. That the Shenandoah was fitted out and armed within British jurisdiction. namely, at London, for the purpose of cruising against the United States; that Great Britain had reasonable ground to believe that such was the case, and did not use due diligence to prevent it.

"5. That she came again within British jurisdiction, where all these facts were open and notorious, and the British authorities exercised no diligence to prevent her departure, but claimed the right to treat her as a commissioned man-of-war, and to permit her to depart as such.

"6. That twice within British jurisdiction she received large recruitments of men, without due diligence being used to prevent it: 1st, at Liverpool, from whence the men were forwarded by the Laurel; and, 2ndly, at Melbourne.

"7. That she was allowed to make repairs and to receive coal and supplies which were denied to vessels of the United States in similar circumstances."

The subsequent career of the steamer Laurel, which, with the Shenandoah, formed the hostile expedition against the United States, throws additional light on the sincerity of the British neutrality in the case of the Shenandoah. On the 7th of March, 1865, Mr. Adams wrote as follows to Earl Russell:

"I am pained to be obliged once more to call your attention to the proceedings of the vessel called the steamer Laurel.

"This is the vessel concerning which I had the honour to make a representation, in a note dated the 10th November last, which appears to have proved, in substance, correct.

"Her departure from Liverpool on the 9th October, laden with men and arms destined to be placed on board of the steamer Sea King, her meeting with that vessel at Porto Santo, in the Madeira Islands, her subsequent transfer of her freight to that steamer, which thereupon assumed the name of the Shenandoah, and proceeded to capture and destroy vessels belonging to the people of the United States, are all facts now established by incontestable evidence.

"It now appears that this steamer Laurel, having accomplished her object under British colours, instead of immediately returning to this Kingdom, made her way through the blockade to the port of Charleston, where she changed her register and her name, and assumed to be a so-called Confederate vessel. In this shape she next made her appearance at the port of Nassau as the 'Confederate States.' From that place she cleared, not long since, to go, viâ Madeira, to the same port of Liverpool, from whence she had originally started.

"It further appears that, notwithstanding the assumption of this new character, this vessel carried out from Nassau a ship mail, made up at the post office of that port, and transported the same to Liverpool. I have the honor to transmit a copy of a letter from the postmaster at that place establishing that fact.

"Under these circumstances, I have the honour to inform your Lordship that I am instructed by my Government to remonstrate against the receipt and clearance with mails of this vessel from Nassau, and to request that such measures may be adopted in regard to her as may prevent her from thus abusing the neutrality of Her Majesty's territory, for the purpose of facilitating the operations of the enemies of the United States."†

To this Earl Russell replied "that Her Majesty's Government are advised, that although the proceedings of the steamer Confederate States, formerly Laurel, may have

* Vol. III, page 475.

† Vol. III, page 339.

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rendered her liable to capture on the high seas by the cruisers of the United States, *she has not, so far as is known, committed any offence punishable by British law.*"*

From all these various facts, the United States ask the Tribunal of Arbitration to find and certify as to the Shenandoah, that Great Britain has, by its acts and by its omissions, failed to fulfil its duties set forth in the three rules of the Treaty of Washington, or recognized by the principles of law not inconsistent with such rules. Should the Tribunal exercise the power conferred upon it by the seventh Article of the Treaty, to award a sum in gross to be paid to the United States, they ask that, in considering the amount to be awarded, the losses in the destruction of vessels and their cargoes by the Shenandoah, and the expense to which the United States were put in the pursuit of it may be taken into account.

Summary.

In the course of the long discussions between the two Governments, which followed the close of the insurrection, it became the duty of Mr. Adams to make a summary of the points which be maintained had been established by the United States. This he did in the following language, addressed to Earl Russell:†

"It was my wish to maintain:—

"1. That the act of recognition by Her Majesty's Government of insurgents as belligerents on the high seas before they had a single vessel afloat was precipitate and unprecedented.

"2. That it had the effect of creating these parties belligerents after the recognition, instead of merely acknowledging an existing fact.

"3. That this creation has been since effected exclusively from the ports of Her Majesty's Kingdom and its dependencies, with the aid and co-operation of Her Majesty's subjects.

"4. That during the whole course of the struggle in America, of nearly four years in duration, there has been no appearance of the insurgents as a belligerent on the ocean excepting in the shape of British vessels, constructed, equipped. supplied, manned, and armed in British ports.

"5. That during the same period it has been the constant and persistent endeavour of my Government to remonstrate in every possible form against this abuse of the neutrality of this Kingdom, and to call upon Her Majesty's Government to exercise the necessary powers to put an effective stop to it.

"6. That although the desire of Her Majesty's Ministers to exert themselves in the suppression of these abuses is freely acknowledged, the efforts which they made proved in a great degree powerless, from the inefficiency of the law on which they relied, and from their absolute refusal, when solicited, to procure additional powers to attain the objects.

"7. That, by reason of the failure to check this flagrant abuse of neutrality, the issue from British ports of a number of British vessels, with the aid of the recognition of their belligerent character in all the ports of Her Majesty's dependencies around the globe, has resulted in the burning and destroying on the ocean of a large number of merchant vessels, and a very large amount of property belonging to the people of the United States.

"8. That, in addition to this direct injury, the action of these British built, manned, and armed vessels has had the indirect effect of driving from the sea a large portion of the commercial marine of the United States, and to a corresponding extent enlarging that of Great Britain, thus enabling one portion of the British people to derive an unjust advantage from the wrong committed on a friendly nation by another portion.

"9. That, the injuries thus received by a country which has meanwhile sedulously endeavoured to perform all its obligations, owing to the imperfection of the legal means at hand to prevent them, as well as the unwillingness to seek for more stringent powers, are of so grave a nature as in reason and justice to constitute a valid claim for reparation and indemnification."

The United States, with confidence, maintain that every point thus asserted by Mr. Adams has been established by the proof hereinbefore referred to. In leaving in the hands of the Tribunal this part of their case, they think it no impropriety earnestly to call attention to the magnitude of the issues to be decided.

Many a vindictive and bloody war has grown out of less provocation than the United States thus suffered from a nation with which they supposed that they were

* Vol. III, page 341.

† Vol. III, page 533.

holding friendly relations. On the 4th of July, 1777, during the war of the American Revolution, Lord Stormont was instructed to say to the French Ministers that "the shelter given to the armed vessels of the rebels, the facility they have of disposing of their prizes by the connivance of the Government, and the conveniences allowed them to refit, are such irrefragable proofs of support, that scarcely more could be done if there was an avowed alliance between France and them, and that we were in a state of war with that Kingdom." He was also directed to say, that however desirous of maintaining the peace, His Britannic Majesty could not, "from respect to his honour and his regard to the interest of his trading subjects, submit to such strong and public instances of support and protection shown to the rebels by a nation that at the same time professes in the strongest terms its desire to maintain the present harmony subsisting between the two Crowns."*

The injuries inflicted upon the United States during the insurrection, under the cover of professions of friendship, are well described in this language of the Ministers of George III, except that the insurgents were allowed to burn, instead of assisted to dispose of their prizes. But the United States, although just emerging from a successful war, with all the appliances of destruction in their grasp, preferred to await a better state of feeling in Great Britain, rather than follow the example of that Government in resorting to war. The time came when Her Majesty's Government felt that it would not be derogatory to the elevated position of their Sovereign, to express regret for the escape of the cruizers and for the depredations which they committed. The United States, receiving this expression of regret in the spirit in which it was made, stand before this Tribunal of Arbitration to abide its judgment.

If the facts which they bring here constitute, in the opinion of the Tribunal, no just cause for claim against Great Britain, they must bow to the decision. But if, on the other hand, Great Britain shall not be able to explain to their complete satisfaction the charges and the proof which they present, the United States will count upon an award to the full extent of their demand. They feel that it is their duty to insist before this August Body, not only in their own interest, but for the sake of the future peace of the world, that it is not a just performance of the duties of a neutral to permit a belligerent to carry on organized war from its territories against a Power with which the neutral is at peace.

If this Tribunal shall hold that combined operations like those of Bullock, Fraser, Trenholm, and Co., Huse, Heyliger, and others (which in the judgment of the United States constituted an organized war), are legitimate, their decision will, in the opinion of the United States, lay the foundation for endless dissensions and wars.

If wrongs like those which the United States suffered are held by this Tribunal to be no violation of the duties which one nation owes to another, the rules of the Treaty of Washington can have little effective force, and there will be little inducement for nations in future to adopt the peaceful method of arbitration for the settlement of their differences.

If it was right to furnish the Nashville at Bermuda with a full supply of coal sufficient to carry her to Southampton, instead of what might be necessary for her to return to Charleston, the United States and the other maritime nations must accept the doctrine in the future.

If there was no violation of international duty in receiving the Sumter at Trinidad, and in supplying her with the fuel necessary to enable her to continue her career of destruction, instead of giving her what was requisite, with her sailing power, to enable her to return to New Orleans or Galveston, it is important that the maritime Powers should know it.

If recognized vessels of war, like the Sumter and the Georgia, may be lawfully sold in a neutral port during time of war, the United States, as a nation whose normal condition is one of neutrality, accept the doctrine.

If the duties of a neutral in preventing, within its territory, the construction, arming, equipping, or fitting out of vessels by one belligerent, which may be intended to cruise against the other belligerent, or the furnishing of arms or military supplies to such vessel, or the recruitment of men for such belligerent, are to be limited to the exercise of the powers conferred upon the neutral Government by municipal law, the United States, with their extended frontier on both oceans, have more interest than any other maritime Power in recognizing that fact.

If the recognition of belligerency by a neutral, in favour of an organized insurrection, authorizes a so-called Government of insurrectionists to issue commissions, which are to protect vessels that may have violated the sovereignty of the neutral from

* Vol. III, page 599.

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examination, inquiry, or punishment by the neutral authorities when again within their jurisdiction, the United States, and other nations here represented, must hold themselves at liberty in future to conform to such measure of duty, in that respect, as may be indicated by this Tribunal.

If Georgias, Alabamas, Floridas, and Shenandoahs may be allowed to go out from neutral ports without violations of international duty, to prey upon the commerce of friendly nations; if it be no offence to recruit men for them and to send the recruits to join them in Alars, Bermudas, Bahamas, and Laurels, the United States as a neutral will be relieved, when other States are at war, from a great part of the difficulties they encounter in watching a long line of coast.

If Tallahassees and Chickamaugas may be constructed in neutral territory, without violation of international duty, to serve as it may suit the pleasure of a belligerent, alternately either as blockade-runners or as men-of-war, those maritime nations whose normal condition is one of neutrality need not regret such a doctrine, when viewed, not in the light of principle, but as affecting their pecuniary interests.

And if it be no offence, as in the case of the Retribution, to take a captured cargo into a neutral port, and there to dispose of it with the knowledge and without the interference of the local magistracy, the maritime Powers, knowing that such buccaneering customs are to be permitted, will be the better able to guard against them.

It will depend upon this Tribunal to say whether any or all of these precedents are to be sanctioned and are to stand for future guidance.

The conduct of other nations contrasted with that of Great Britain.

The United States, in closing this branch of the Case, desire to call the attention of the Tribunal to the fact that they came out from this long and bloody contest without serious cause of complaint against any nation except Great Britain.

The Executives of other nations issued notices to their citizens or subjects, enjoining upon them to remain neutral in the contest.

Belgium issued a notice on the 25th of June, 1861, warning Belgians against engaging as privateers.* The United States had never any cause of complaint in this respect against Belgium.

The Emperor of the French, on the 10th of June, 1861, issued a Proclamation commanding his subjects to "maintain a strict neutrality in the struggle entered upon between the Government of the Union and the States which pretended to form a separate confederation."† The United States refer to the foregoing recital of the proceedings against Mr. Arman's vessels, as a proof of the fidelity with which the Imperial Government maintained the neutrality which is imposed upon its subjects.

The Government of the Netherlands forbade privateers to enter its ports, and warned the inhabitants of the Netherlands and the King's subjects abroad not to accept letters of marque.‡ The United States have no knowledge that these directions were disobeyed.

The Government of Portugal shut the harbours of the Portuguese dominions against privateers and their prizes.§ Of this the United States had no complaint to make. At a later period that Government went so far "as to forbid the coaling of any steamer designing to violate the blockade," and to "require a bond to be given, before allowing coals to be furnished at all, that the ship receiving the supply will not run the blockade."‖ When the insurgent iron-clad Stonewall came into Lisbon Harbour in March, 1865, it was ordered to leave in twenty-four hours.¶ The United States bear willing testimony to this honourable conduct of Portugal.

The Prussian Government announced that it would not protect its shipping or its subjects who might take letters of marque, share in privateering enterprises, carry merchandise of war, or forward dispatches.** The United States have no reason to suppose that the subjects of the King of Prussia departed from the line of duty thus indicated.

The Russian Government ordered that even "the flag of men-of-war belonging to the seceded States must not be saluted."††

Spain followed France in the track of England,‡‡ but care was taken to avoid, in

* Vol. IV, page 3.
† Vol. IV, page 4.
‡ Vol. IV, page 6.
§ Vol. IV, page 7.
‖ Mr. Harvey to Mr. Seward, Diplomatic Correspondence, 1864, Part 4, page 296.
¶ Same to same, Diplomatic Correspondence, 1865, Part 3, page 109.
** Vol. IV, page 8.
†† Vol. IV, page 9.
‡‡ Vol. IV, page 10.

Summary.

The conduct of other nations contrasted with that of Great Britain.

the Royal Proclamation, the use of the word "belligerents."* It has been seen with what fidelity and impartiality the authorities at Cardenas carried out the letter and the spirit of this Proclamation, when the Florida arrived there from Nassau, in the summer of 1862.

The Emperor of Brazil required his subjects to observe a strict neutrality; and his Government informed them what acts of the belligerents would forfeit the right of hospitality. It was ordered that "a belligerent who has once violated neutrality shall not be admitted into the ports of the Empire;" and that "vessels which may attempt to violate neutrality shall be compelled to leave the maritime territory immediately, and they shall be allowed to procure no supplies." These rules were enforced. The Alabama was refused the hospitality of Brazilian ports in consequence of violations of the neutrality which the Emperor had determined to maintain. When the Tuscaloosa came to St. Catharine's from Simon's Bay, in November 1863, she was refused supplies and ordered to leave, because she was a tender and prize of the Alabama, and was tainted by the acts of that vessel. The commander of the Shenandoah boarded a vessel between Cardiff and Bahia, opened the manifest, and broke the seal of the Brazilian Consul; for this act his vessel, and any vessel which he might command, were excluded from Brazilian ports.† The Imperial Government, in all these proceedings, appeared desirous of asserting its sovereignty, and of maintaining an honest neutrality.

Mr. Fish, in one of his first utterances after he became Secretary of State, expressed the sense which the United States entertained of this difference between the conduct of Great Britain and that of other nations. "There were other Powers," he said, "that were contemporaneous with England in similar concessions; but it was in England only that that concession was supplemented by acts causing direct damage to the United States. The President is careful to make this discrimination, because he is anxious, as much as possible, to simplify the case, and to bring into view these subsequent acts, which are so important in determining the question between the two countries."‡

* Vol. IV, page 9.
† Vol. VI, page 588.
‡ Mr. Fish to Mr. Motley, May 15, 1869, Vol. VI, page 4.

PART VI.

The Tribunal should award a sum in gross to the United States.

THE TRIBUNAL SHOULD AWARD A SUM IN GROSS TO THE UNITED STATES.

Offer of the American Commissioners in the Joint High Commission.

IN the opening conference of the Joint High Commission relating to the Alabama Claims, the American Commissioners stated the nature of the demands of the United States. They said that there were "extensive direct losses in the capture and destruction of a large number of vessels with their cargoes, and in the heavy national expenditures in the pursuit of the cruisers, and indirect injury in the transfer of a large part of the American commercial marine to the British flag, in the enhanced payments of insurance, in the prolongation of the war, and in the addition of a large sum to the cost of the war and the suppression of the rebellion." They further said that the amount of the direct losses to individuals "which had thus far been presented, amounted to about fourteen millions of dollars, without interest, which amount was liable to be greatly increased by claims which had not been presented; and that the direct loss to the Government "in the pursuit of cruisers could easily be ascertained by certificates of Government accounting officers." They added, that "in the hope of an amicable settlement, no estimate was made of the indirect losses, without prejudice, however, to the right of indemnification on their account in the event of no such settlement being made."*

Rejection of the offer by the British Commissioners. Terms of the submission by the Treaty.

The British Commissioners declined to make the "amicable settlement" which was proposed on the part of the United States. The Joint High Commission then entered into negotiations which resulted in an agreement "in order to remove and adjust all complaints and claims on the part of the United States, and to provide for the speedy settlement of such claims," that all the claims "growing out of the acts committed by the several vessels which have given rise to the claims generically known as the Alabama Claims," should be referred to this Tribunal of Arbitration. It was further agreed that this Tribunal, should it find that Great Britain had, by any act or omission, failed to fulfil any of the duties set forth in the rules in the sixth Article of the Treaty, or recognized by principles of International Law not inconsistent with such rules, might then "proceed to award a sum in gross to be paid by Great Britain to the United States for all the claims referred to it."

General statement of the claims

The claims as stated by the American Commissioners may be classified as follows:

1. The claims for direct losses growing out of the destruction of vessels and their cargoes by the insurgent cruisers.

2. The national expenditure in the pursuit of those cruisers.

3. The loss in the transfer of the American commercial marine to the British flag.

4. The enhanced payments of insurance.

5. The prolongation of the war and the addition of a large sum to the cost of the war and suppression of the rebellion.

So far as these various losses and expenditures grew out of the acts committed by the several cruisers, the United States are entitled to ask compensation and remuneration therefore before this Tribunal.

Claims growing out of destruction of vessels and cargoes.

The claims for direct losses growing out of the destruction of vessels and their cargoes may be further subdivided into:

1. Claims for destruction of vessels and property of the Government of the United States.

* *Ante*, page 1.

2. Claims for the destruction of vessels and property under the flag of the United States.

The Tribunal should award a sum in gross to the United States.

3. Claims for damages or injuries to persons, growing out of the destruction of each class of vessels.

In the accompanying Volume, VII, the Tribunal will find ample data for determining the amount of damage which should be awarded, in consequence of the injuries inflicted by reason of the destruction of vessels or property, whether of the Government or of private persons.

Claims growing out o destruction of vessel and cargoes.

The Government vessels destroyed were of two classes—those under the charge of the Treasury Department, and those in charge of the Navy Department. The Tribunal of Arbitration will find in Volume VII detailed statements of this class of losses, certified by the Secretary of the Navy or by the Secretary of the Treasury, as the case may be.

Government vessels.

The United States reserve, however, as to this and as to all other classes of claims, the right to present further claims and further evidence in support of these and such further claims, for the consideration of the Tribunal; and also similar rights as to all classes of claims, in case this Tribunal shall determine not to award a sum in gross to the United States.

The United States, with this reservation, present a detailed statement of all the claims which have as yet come to their knowledge, for the destruction of vessels and property by the cruisers. The statement shows the cruiser which did the injury, the vessel destroyed, the several claimants for the vessel and for the cargo, the amounts insured upon each, and all the other facts necessary to enable the Tribunal to reach a conclusion as to the amount of the injury committed by the cruiser. It also shows the nature and character of the proof placed in the hands of the United States by the sufferers. The originals of the documents referred to are on file in the Department of State at Washington, and can be produced if desired. The United States only ask a reasonable notice, giving them sufficient opportunity to produce them.

Merchant vessels.

It is impossible, at present, for the United States to present to the Tribunal a detailed statement of the damages or injuries to persons growing out of the destruction of each class of vessels. Every vessel had its officers and its crew, who were entitled to the protection of the flag of the United States, and to be included in the estimate of any sum which the Tribunal may see fit to award. It will not be difficult, from the data which are furnished, to ascertain the names and the tonnage of the different vessels destroyed, and to form an estimate of the number of hardy, but helpless, seamen who were thus deprived of their means of subsistence, and to determine what aggregate sum it would be just to place in the hands of the United States on that account. It cannot be less than hundreds of thousands, and possibly millions of dollars.

Injuries to persons.

The United States present to the Tribunal a detailed statement of the amount of the national expenditure in the pursuit of the insurgent cruisers, verified in the manner proposed by the American members of the Joint High Commission. The aggregate of this amount is several millions of dollars.

Expenditures in pursuit of the cruisers.

The United States ask the Tribunal of Arbitration to estimate the amount which ought to be paid to them for the transfer of the American commercial marine to the British flag, in consequence of the acts of the rebel cruisers.

Transfer of vessels to the British flag.

On the 13th of May, 1864, Mr. Cobden warned the House of Commons of the great losses which the United States were suffering in this respect. He said:*

"You have been carrying on hostilities from these shores against the people of the United States, and have been inflicting an amount of damage on that country greater than would be produced by many ordinary wars. It is estimated that the loss sustained by the capture and burning of American vessels has been about 15,000,000 dollars, or nearly 3,000,000*l.* sterling. But this is a small part of the injury which has been inflicted on the American marine. We have rendered the rest of her vast mercantile property for the present valueless. Under the system of free trade, by which the commerce of the world is now so largely carried on, if you raise the rate of insurance on the flag of any maritime Power you throw the trade into the hands of its competitors, because it is no longer profitable for merchants or manufacturers to employ ships to carry freights when those vessels become liable to war risks. I have here one or two facts which I should like to lay before the honourable and learned gentleman, in order to show the way in which this has been operating. When he has heard them, he will see what a cruel satire it is to say that our laws have been found sufficient to enforce our neutrality. I hold in my hand an account of the foreign trade of New York for the quarter ending June 30, 1860, and also for the quarter ending June 30, 1863, which is the last date up to which a comparison is made. I find that the total

* Hansard 3rd series, Vol. CLXXV, pp. 496–500; Vol. V, page 589.

The Tribunal should award a sum in gross to the United States.

Transfer of vessels to the British flag.

amount of the foreign trade of New York for the first-mentioned period was 92,000,000 dollars, of which 62,000,000 dollars were carried in American bottoms, and 30,000,000 dollars in foreign. This state of things rapidly changed as the war continued, for it appears that for the quarter ending June 30, 1863, the total amount of the foreign trade of New York was 88,000,000 dollars, of which amount 23,000,000 dollars were carried in American vessels, and 65,000,000 dollars in foreign, the change brought about being that while in 1860 two-thirds of the commerce of New York were carried on in American bottoms, in 1863 three-fourths were carried on in foreign bottoms. You see, therefore, what a complete revolution must have taken place in the value of American shipping; and what has been the consequence? That a very large transfer has been made of American shipping to English owners, because the proprietors no longer found it profitable to carry on their business. A document has been laid on the table which gives us some important information on the subject, I refer to an account of the number and tonnage of United States' vessels which have been registered in the United Kingdom and in the ports of British North America between the years 1858, and 1863, both inclusive. It shows that the transfer of United States' shipping to English capitalists in each of the years comprised in that period was as follows:

"In 1858, vessels 33, tonnage 12,684.
"In 1859, vessels 49, tonnage 21,308.
"In 1860, vessels 41, tonnage 13,638.
"In 1861, vessels 126, tonnage 71,673.
"In 1862, vessels 135, tonnage 64,578.
"In 1863, vessels 348, tonnage 252,579.*

"I am told that this operation is now going on as fast as ever. Now, I hold this to be the most serious aspect of the question of our relations with America. I care very little about what newspapers may write, or orators may utter, on one side or the other. We may balance off an inflammatory speech from an honourable member here against a similar speech made in the Congress at Washington. We may pair off a leading article published in New York against one published in London; but little consequence, I suspect, would be attached to either. The two countries, I hope, would discount these incendiary articles, or these incendiary harangues, at their proper value. But what I do fear in the relations between these two nations of the same race, is the heaping up of a gigantic material grievance, such as we are now accumulating by the transactions connected with these cruisers; because there is a vast amount of individual suffering, personal wrong, and personal rancour arising out of this matter, and that in a country where popular feeling rules in public affairs. I am not sure that any legislation can meet this question. What with the high rate of insurance, what with these captures, and what with the rapid transfer of tonnage to British capitalists, you have virtually made valueless that vast property. Why, if you had gone and helped the Confederates by bombarding all the accessible sea-port towns of America, a few lives might have been lost which, as it is, have not been sacrificed, but you could hardly have done more injury in destroying property than you have done by these few cruisers."

Enhanced rates of insurance.

With the reservations already stated, the United States present the amount, so far as it has come to their knowledge, of the enhanced payments of insurance, caused by the acts of the insurgent cruisers. All of these cruisers came from England; and should the Tribunal find Great Britain responsible for the injuries caused by their acts, it cannot be denied that the war risk was the result of their dispatch from British ports. The amount of this injury, so far as yet known to the United States, appears in Vol. VII.

Prolongation of the war.

It is impossible for the United States to determine, it is perhaps impossible for any one to estimate with accuracy, the vast injury which these cruisers caused in prolonging the war.

The great exertions which were made in the months of April, May, and June, 1863, to secure arms and ammunition for immediate use in Richmond have already been noted. Letter followed letter in rapid succession, urging Walker to forward the desired articles without delay. The energetic measures which Walker took to obtain coal to enable him to comply with his instructions have been commented on. The insurrection was at that moment gathering itself up for a blow which was intended to be final and decisive.

On the 29th of April in that year, Grant, having taken an army past the fortifications of Vicksburg, began the attack upon Grand Gulf, and from that day conducted

* In the year 1864 one hundred and six vessels were transferred to the British flag, with an aggregate tonnage of 92,052 tons.

his operations with such vigour, that by the 21st of May he had defeated the armies of the insurgents in five pitched battles, and had commenced the investment of Vicksburg. In the Atlantic States the fortunes of the United States had been less favourable. The army of the Potomac, under Hooker, had met with a decided reverse at Chancellorsville, and was resting inactive after the failure.

The Tribunal should award a sum in gross to the United States.

Prolongation of the war.

The military authorities at Richmond, having received the supplies which Walker had forwarded, selected this moment for a blow in Pennsylvania, which was intended at once to relieve Vicksburg, and decide the contest. History tells how utterly they failed. After three days of bloody fighting, Lee retired from Gettysburg discomfited. The same day Grant entered Vicksburg and opened the Mississippi.

The 4th day of July, 1863, saw the aggressive force on land of the insurrection crushed. From that day its only hope lay in prolonging a defence until by the continuance of the permitted violations of British neutrality by the insurgents, the United States should become involved in a war with Great Britain. The insurgents had, at that time, good reason to look for that result. The Florida, the Alabama, and the Georgia had left British ports for the purpose of carrying on war against the United States, and were nevertheless, received with unusual honours and hospitality in all the colonial ports of Great Britain. Only ten days before the battle of Gettysburg, the judge who presided at the trial of the Alexandra had instructed the jury that no law or duty of Great Britain had been violated in the construction and dispatch of the Alabama. About three months before that time Her Majesty's Government had decided that they would not recommend Parliament to enact a more effective law for the preservation of neutrality. Laird was constructing the rams in Liverpool under the existing interpretation of the law, and the British Government was refusing to interfere with them. The Chancellor of the Exchequer, five days before the battle of Gettysburg, had declared in the House of Commons, speaking not individually, but in the plural, "We do not believe that the restoration of the American Union by force is attainable!" Under these circumstances the insurgents made great exertions to keep the Florida, the Alabama, and the Georgia afloat, and to stimulate their officers and crews to renewed destruction of the commerce of the United States. They counted, not without reason, upon inflaming popular passion in the United States by the continuance of these acts, until the people should force the Government into a retaliation upon Great Britain, the real author of their woes. In pursuance of this policy they withdrew their military forces within the lines of Richmond, and poured money into Bullock's hands to keep afloat and increase his British-built navy, and to send it into the most distant seas in pursuit of the merchant marine of the United States.

Thus the Tribunal will see that, after the battle of Gettysburg, the offensive operations of the insurgents were conducted only at sea, through the cruisers; and observing that the war was prolonged for that purpose, will be able to determine whether Great Britain ought not, in equity, to reimburse to the United States the expenses thereby entailed upon them.

On all these points evidence is presented which will enable the Tribunal to ascertain and determine the amount of the several losses and injuries complained of. To the amount thus shown should be added interest upon the claims to the day when the award is payable by the terms of the Treaty, namely, twelve months after the date of the award. The usual legal rate of interest in the City of New York, where most of the claims of individuals are held, is seven per cent. per annum. In some of the States it is greater: in few of them less. The United States make a claim for interest at that rate. The computation of the interest should be made from an average day to be determined. The United States suggest the 1st day of July, 1863, as the most equitable day.

Interest claimed to the date of payment.

They earnestly hope that the Tribunal will exercise the power conferred upon it, to award a sum in gross to be paid by Great Britain to the United States. The injuries of which the United States complain were committed many years since. The original wrongs to the sufferers by the acts of the insurgent cruisers have been increased by the delay in making reparation. It will be unjust to impose further delay, and the expense of presenting claims to another Tribunal, if the evidence which the United States have the honour to present for the consideration of these Arbitrators shall prove to be sufficient to enable them to determine what sum in gross would be a just compensation to the United States for the injuries and losses of which they complain.

Reasons why a gross sum should be awarded.

Above all it is in the highest interest of the two great Powers which appear at this Bar, that the causes of difference which have been hereinbefore set forth, should be speedily and for ever set at rest. The United States entertain a confident expectation that Her Majesty's Government will concur with them in this opinion.

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NORTH AMERICA. No. 3 (1872).

CORRESPONDENCE

RESPECTING THE

PRESENTATION AT GENEVA

OF THE

BRITISH COUNTER-CASE TO THE ARBITRATORS,

UNDER THE

IV$_{TH}$ ARTICLE

OF THE

TREATY OF WASHINGTON OF MAY 8. 1871.

Presented to both Houses of Parliament by Command of Her Majesty.
1872.

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Correspondence respecting the Presentation at Geneva of the British Counter-Case to the Arbitrators, under the IVth Article of the Treaty of Washington of May 8, 1871.

No. 1.

Earl Granville to Sir E. Thornton.

Sir, *Foreign Office, April* 8, 1872.

GENERAL SCHENCK informed me on the 22nd of March that he had written to Mr. Fish and told him that he had said to me in confidence that he thought his Government would not object to Her Majesty's Government putting in their Counter-Case before the Arbitrators without prejudice to the position which Her Majesty's Government are now maintaining, and that the Government of the United States would accede to such an understanding; and he stated his expectation of obtaining from Mr. Fish, on the 2nd or 3rd of April by telegraph, his view on that point.

On the 5th instant General Schenck wrote to me stating that he had now received Mr. Fish's reply confirming his opinion. Mr. Fish says, General Schenck informed me, that it is the understanding of the United States that the British Government is bound under the Treaty to file a Counter-Case, and that their doing so will not prejudice any position they have taken, nor affect any position of the United States, but that the rights of both parties will be the same after filing as before.

General Schenck, whom I have seen to-day on his return from Paris, has verbally confirmed to me this statement.

General Schenck afterwards said that he had no objection to my communicating his letter to my colleagues, or indeed announcing it to Parliament.

I am, &c.
(Signed) GRANVILLE.

No. 2.

Earl Granville to General Schenck.

My dear General Schenck, *Foreign Office, April* 9, 1872.

I HAVE submitted to the Cabinet my correspondence with you, and the substance of our conversation yesterday, on the question of Her Majesty's Government presenting the Counter-Case to the Tribunal of Geneva on the 15th of this month, without prejudice to the position which they maintain, as to the nature and the extent of the claims referred to that Tribunal.

I inclose a copy of the note which I propose to have presented at the same time as the Counter-Case.

Yours sincerely, &c.
(Signed) GRANVILLE.

No. 3.

General Schenck to Earl Granville.—(Received April 11.)

My dear Lord Granville, *April* 10, 1872.

I RECEIVED last night your note, inclosing a copy of the paper which you propose to have presented at Geneva at the same time with your Counter-Case. I will hasten to communicate information of it to my Government.

Very sincerely yours,
(Signed) ROBT. C. SCHENCK.

No. 4.

Declaration to be addressed, on the 15th April, 1872, by Her Majesty's Agent at Geneva, to the Arbitrators appointed under the Ist Article of the Treaty of Washington of May 8, 1871.

Geneva, April , 1872.

THE Undersigned, Agent of Her Britannic Majesty, is instructed by Her Majesty's Government to state to Count Sclopis,* that, while presenting their Counter-Case, under the special reservation hereinafter mentioned, in reply to the Case which has been presented on the part of the United States, they find it incumbent upon them to inform the Arbitrators that a misunderstanding has unfortunately arisen between Great Britain and the United States as to the nature and extent of the claims referred to the Tribunal by the First Article of the Treaty of Washington.

This misunderstanding relates to the claims for indirect losses put forward by the Government of the United States, under the several heads of—(1.) "The loss in the transfer of the American commercial marine to the British flag." (2.) "The enhanced payments of insurance." (3.) "The prolongation of the war, and the addition of a large sum to the cost of the war and the suppression of the rebellion"; which claims for indirect losses are not admitted by Her Majesty's Government to be within either the scope or the intention of the reference to arbitration.

Her Majesty's Government have been for some time past, and still are, in correspondence with the Government of the United States upon this subject; and, as this correspondence has not been brought to a final issue, Her Majesty's Government being desirous (if possible) of proceeding with the reference as to the claims for direct losses, have thought it proper in the mean time to present to the Arbitrators their Counter Case (which is strictly confined to the claims for direct losses), in the hope that, before the time limited by the Fifth Article of the Treaty, this unfortunate misunderstanding may be removed.

But Her Majesty's Government desire to intimate, and do hereby expressly and formally intimate and notify to the Arbitrators, that this Counter-Case is presented without prejudice to the position assumed by Her Majesty's Government in the correspondence to which reference has been made, and under the express reservation of all Her Majesty's rights, in the event of a difference continuing to exist between the High Contracting Parties as to the scope and intention of the reference to arbitration.

If circumstances should render it necessary for Her Majesty to cause any further communication to be addressed to the Arbitrators upon this subject, Her Majesty will direct that communication to be made at or before the time limited by the Vth Article of the Treaty.

The Undersigned, &c. (Signed) TENTERDEN.

---

* Similar letters to be addressed to Baron Itajuba, M. Staempfli, the Chief Justice, and Mr. C. F. Adams.

NORTH AMERICA. No. 3 (1872).

CORRESPONDENCE respecting the Presentation at Geneva of the British Counter-Case to the Arbitrators, under the IVth Article of the Treaty of Washington of May 8, 1871.

Presented to both Houses of Parliament by Command of Her Majesty. 1872.

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NORTH AMERICA. No. 4 (1872).

COUNTER-CASE

PRESENTED ON THE PART OF THE

GOVERNMENT OF HER BRITANNIC MAJESTY

TO THE

TRIBUNAL OF ARBITRATION

CONSTITUTED UNDER ARTICLE I OF THE TREATY CONCLUDED AT WASHINGTON ON THE 8TH MAY, 1871, BETWEEN HER BRITANNIC MAJESTY AND THE UNITED STATES OF AMERICA.

Presented to both Houses of Parliament by Command of Her Majesty.
1872.

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Three Volumes of additional documents, correspondence, and evidence are presented with this Counter-Case. For the sake of convenience they have been numbered as forming Volumes V, VI, and VII of the Appendix to the Case of Her Britannic Majesty's Government. Their contents are as follows:—

Vol. V. Correspondence relating to the conduct of British authorities in the West Indies; Further papers relating to the Florida, Alabama, and Shenandoah; Papers relating to the Chickamauga, Tallahassee, and Retribution; Miscellaneous correspondence; Returns of visits of United States' vessels to British ports; Correspondence respecting the fitting-out of French privateers in ports of the United States, 1793-96; Decisions of the Commissioners under the VIIth Article of the Treaty of November 19, 1794; Correspondence between the United States and Mexico respecting the exportation of contraband of war for the use of the French army; Proposed revision of the American Foreign Enlistment Act in 1866, and extracts from opinions of Attorneys-General of the United States on the subject of neutrality, 1795-1855.

Vol. VI. Correspondence respecting the reception of Confederate cruizers in ports of other countries; Papers relating to the supply of arms to the United States from Great Britain during the Civil War.

Vol. VII. Reports of Committees appointed by the Board of Trade and Admiralty to examine the statements of Claims of the Government and citizens of the United States, contained in Volume VII of the Appendix to the Case of the United States.

[NOTE.—*The references to the Case of the United States given in the text and foot-notes indicate the pages of the original American copies; those given in the margin refer to the paging of the copies presented to Parliament.*]

PART I.

Introductory Statement.

Introductory Statement.

THE Government of Her Britannic Majesty now presents to the Tribunal of Arbitration its Counter-Case, or reply to the Case submitted on the part of the United States, so far as a reply appears to be necessary or admissible.

To the second chapter of the American Case, which imputes to the British Government hostile motives, and even insincere neutrality, no reply whatever will be offered in this Counter-Case. The British Government distinctly refuses to enter upon the discussion of these charges. First, because it would be inconsistent with the self-respect which every Government is bound to feel; secondly, because the matter in dispute is action, and not motive, and therefore the discussion is irrelevant; thirdly, because to reply, and to enter upon a retaliatory exposition, must tend to inflame the controversy which, in the whole tone and tenour of its Case, the British Government has shown its desire to appease; and lastly, with respect to the charges themselves, if they were of any weight or value, the British Government would still contend that the proper reply to them was to be found in the proof which it has supplied that its proceedings have throughout, and in all points, been governed by a desire, not only to fulfil all clear international duties towards the Government of the United States, but likewise, when an opportunity was offered, even to go beyond what could have been demanded of it as of right, in order to obviate all possibility of cavil against its conduct.

Neither will this Counter-Case contain any reference whatever to the subject of indirect losses. Her Majesty's Government is engaged in a correspondence with the Government of the United States on this subject, pending which, this Counter-Case is presented, without prejudice to the position assumed by Her Majesty in that correspondence, and under the reservations more particularly stated in a note accompanying it, which will be, at the same time, delivered to the Arbitrators.

Vessels to which the Claims of the United States relate.

Vessels to which the claims of the United States relate.

Her Britannic Majesty's Government believed itself to be, and was in fact, justly entitled to assume that the claims which it had to meet would be found to relate exclusively to the four vessels known as the Florida, Alabama, Georgia and Shenandoah, or some or one of them; these being the only ships in respect of which claims had been made by the Government of the United States against Great Britain. It appears that, beside claiming on account of all of these four vessels, the United States now claim on account of nine other vessels, none of which are alleged to have been in any manner armed, fitted out, or equipped for war within British territory. Three of these are stated to have been captured, armed, and employed as tenders by the officer commanding the Florida during the cruize of that vessel, and one by the commander of the Alabama. Of two others, the Sumter and Nashville, it is alleged only that they received hospitalities in British ports, while cruizing as ships of war of the Confederate States; of two more, the Tallahassee and Chickamauga, that, having been originally built in England and employed in carrying cargo to and from ports of the Confederate States, they were converted into cruizers by the Confederate Government; and of the ninth, the Retribution, that her commander contrived on two occasions to carry a prize captured by him on the high seas into the territorial waters of an island belonging to Her Majesty's dominions, and there to dispose of or destroy the cargo.

Part I.

—

Introductory Statement.

As to all of these nine vessels, but more especially as to five of them, it might justly be maintained that they ought not to be reckoned among the vessels which have given rise to the claims generically known as the Alabama claims, and that no complaints in respect of them ought to be considered or received by the Arbitrators. Her Britannic Majesty's Government, however, has not thought proper to raise this objection. It contents itself with directing the attention of the Tribunal to the fact that, neither in the course of the war, nor during the long period which has elapsed since its conclusion, have any claims whatever been made upon Great Britain by the United States on account of any of these vessels.

There have been further introduced into the list of claims losses for captures by two vessels, named the Boston and Sallie, which are not mentioned in the Case, and expenses said to have been incurred in the pursuit of a third (the Chesapeake), as to which the Case is equally silent. Her Majesty's Government presumes that this has been done through inadvertence. No award can be made which shall comprehend or take into account the acts of vessels as to which the United States have not even alleged any failure of duty.

General Character of the Evidence.

General character of the evidence adduced by the United States.

It would be superfluous to remind the Tribunal that the conclusions, at which it will arrive, must of necessity be formed, not upon what the Government of the United States may allege, but upon what it shall be able to prove. Nor can it be necessary to point out that, whilst it is not the duty of the Tribunal to apply to the evidence produced on either side rules drawn from the law or methods of procedure established in any particular State, the credibility and value of that evidence must nevertheless be tried by those general principles of reason and justice which are applicable to all testimony, in whatever forum it may be offered, for whatever purpose, or under whatever circumstances. But it may be convenient that the attention of the Arbitrators should at the outset be directed to the character of some portions of the evidence on which the United States rely.

Much of the evidence adduced on behalf of the United States has been also laid before the Arbitrators by Great Britain, either as supporting the Case of Her Britannic Majesty's Government, or as forming part of the official correspondence and other materials of which it was proper that the Arbitrators should be in possession before proceeding to adjudicate on the matters referred to them. Much therefore of the evidence on each side is common to both, though the two parties differ in the use which they respectively make of it.

Amongst the other documentary evidence cited or referred to in the Case of the United States, are reports and despatches from Consuls or Consular officers of the United States who were during the war, or have since been, resident in ports within Her Majesty's dominions. Of these persons it may be assumed that they were gentlemen worthy of credit when relating anything within the range of their personal knowledge. As to statements made by them on the authority of others, the credit to be attached to these must depend in every case on the knowledge and veracity of the informant, not on those of the reporter of the information. Statements made on the ground of alleged notoriety or public rumour are evidence only—and that of a very vague and unsatisfactory kind, since little reliance can be placed on assertions which, from their very nature, there can be no means of testing —that a number, greater or less, of persons who are themselves unknown, and whose credibility and means of information are likewise unknown, believe, or have reported, a supposed fact to be true. It should be added that these officers were, as was natural, zealous—sometimes to indiscretion—in the cause of their Government; that they shared to the full, with their countrymen at home, in the excited and irritable feelings which are generated by civil war, and were, like their Government, firmly impressed with the erroneous idea that all armed vessels of the Confederate States ought, in foreign ports, to be regarded and treated as piratical. The admission of a Confederate ship on the same terms as a United States' ship, was by itself, in their view, an offence against the United States; and this error led them into many misconceptions, and coloured throughout the reports which they addressed to their Government.

The Government of the United States has appended to its Case, and has frequently referred to, and invoked as evidence against Great Britain, a mass of Confederate papers, the greater part of which consists of correspondence said to have passed between persons who were hired and employed during the war for various purposes by the Confederate Government and officials of that Government, whilst the rest is of a private and still less authentic character. Most of these papers are said to have been "captured

at the taking of Richmond, and at other times;" and they, or such portions of them as the Government of the United States has thought fit to make public, are now made known to Her Britannic Majesty's Government for the first time. Of the authenticity of them, and of the manner in which they came into the possession of the Government of the United States, Her Britannic Majesty's Government has no knowledge whatever beyond that which it derives from the above-mentioned statement, which it willingly accepts as true. Of the persons by whom and the circumstances under which the letters were written, and of the character and credibility of the writers, it knows nothing whatever. They are persons with whom this Government had nothing to do, and whose very existence was unknown to it; and it does not admit as evidence against Great Britain any statements which they may have made to those who employed them or to one another.

General character of the evidence adduced by the United States.

Some notice must here be taken of the use, which has been made in the Case of the United States, of opinions recently expressed by one or two living writers respecting the matters referred to the Tribunal. One of these (Dr. Blüntschli) is a jurist of celebrity, who, in the short paper written by him on the subject, has with great propriety guarded himself against being supposed to pronounce any decisive opinion, frankly admitting the inadequacy of his information, which indeed he appears to have derived entirely from a speech delivered in the Senate of the United States. On this point, however, Her Britannic Majesty's Government has but one remark to make. Whatever qualifications these writers might be found to possess for forming a judgment on the question, if they had been acquainted with the facts—a matter on which Her Majesty's Government has no opinion to express—they are not the persons selected as Arbitrators in this case. The eminent persons who have been so selected will form their conclusions under the definite sense of responsibility proper to a high and regularly constituted judicial tribunal, after hearing both sides, and upon a full and complete knowledge, such as no one can possibly have possessed before, of all the facts of the case; and Her Britannic Majesty's Government is well assured that they will feel it to be, as it is, their first duty to form those conclusions for themselves, upon the facts and arguments brought before them, absolutely uninfluenced by any opinions which any writer, be he who he may, has permitted himself to express, whether on one side or on the other.

It is well known to the Arbitrators that when, on former occasions recorded in history, jurists have undertaken to determine the merits of international questions actually in controversy, the judgments so pronounced have been held questionable, as open to the suspicion of partizanship, and have, in fact, been often influenced by a bias, the precise causes of which it might be difficult to ascertain. This alone is a sufficient reason why weight should not be assigned to opinions put forward *post litem motam*.

PART II.

Argument of the United States on Neutral Duties.

Propositions affirmed by the United States.

Argument of the United States on neutral duties.

Propositions affirmed by the United States.

IN Part III of the Case of the United States an endeavour has been made to furnish the Arbitrators with a definition of the duties which Great Britain, as a neutral Power, was bound to observe towards the United States during the war. At the close of an elaborate dissertation on this subject, the Government of the United States sums up the conclusions which it conceives itself to have established, in the form of twelve propositions. These propositions it regards as governing the questions involved in the claims which it submits to the Arbitrators.

Her Majesty's Government believes that it will adopt the course most convenient to the Tribunal, by explaining at once and in the first place how far it assents to the propositions laid down by the United States, and how far it dissents from them; examining afterwards, so far as may be necessary, the grounds on which the conclusions of the United States are formed, and stating its own conclusions on such points as appear to be in dispute.

The propositions advanced on the part of the United States are the following :—* Case of the United States, p. 57.

"1. That it is the duty of a neutral to preserve strict and impartial neutrality as to both belligerents during hostilities."

The British Government willingly assents to this proposition. No one, indeed, has yet been found to deny that it is the duty of a neutral Power to be neutral; or that neutrality is, by its very definition, a condition of impartiality in matters relating to the war; or to affirm that it is possible to be neutral as to one of two belligerents without being neutral as to the other.

"2. That this obligation is independent of municipal law."

The British Government accepts this proposition also.

"3. That a neutral is bound to enforce its municipal laws and its executive proclamation, and that a belligerent has the right to ask it to do so, and also the right to ask to have the powers conferred upon the neutral by law increased, if found insufficient."

The British Government does not dispute that a belligerent Government may, if it think fit, ask for any of these things. But that a neutral Power is under an international obligation to comply with the request, or to enforce its municipal laws and all proclamations or orders issued by the Executive Government, is far from being universally true: it is admissible only under very material qualifications, which will be presently stated. Still less can it be admitted to be generally true that a belligerent Power has a right to call upon the neutral State to make changes in its domestic legislation.

"4. That a neutral is bound to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruize or to carry on war against a Power with which it is at peace.

"5. That a neutral is bound to use like diligence to prevent the construction of such a vessel.

"6. That a neutral is bound to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruize or carry on war against any Power with which it is at peace; such vessel having been specially adapted, in whole or in part, within its jurisdiction, to warlike use.

"7. That a neutral may not permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other.

"8. That a neutral is bound to use due diligence in its ports or waters, to prevent either belligerent from obtaining there a renewal or augmentation of military supplies, or arms for belligerent vessels, or the recruitment of men."

Great Britain adheres to the three Rules inserted in Article VI of the Treaty of

* Case of the United States, pp. 210, *et seq.*.

Part II.
§ I.—
Argument of the United States on neutral duties.

Washington, and accepts them in the words in which they are there expressed; whilst it considers those Rules as exceeding in some material respects the obligations which, independently of them, could have been established by International Law against a neutral Power free from all engagements on the subject, direct or indirect, with a belligerent. The British Government is willing to discuss the construction of these Rules, but declines to admit any deviation from or enlargement of them. The statement that a neutral Government "is bound to use like diligence to prevent the construction of such a vessel," appears to Her Majesty's Government to be such a deviation or enlargement. It is, in fact, a simple interpolation. Nor can the propositions numbered 7 and 8 be accepted as a correct representation of the Second and Third Rules.

"9. That when a neutral fails to use all the means in its power to prevent a breach of the neutrality of its soil or waters, in any of the foregoing respects, the neutral should make compensation for the injury resulting therefrom."

The British Government does not admit this proposition as it stands, but it agrees that, where an appreciable injury has been directly caused by a violation of a clearly-ascertained international duty, suitable reparation ought to be made to the injured party.

"10. That this obligation is not discharged or arrested by the change of the offending vessel into a public man-of-war.

"11. That this obligation is not discharged by a fraudulent attempt of the offending vessel to evade the provisions of a local municipal law.

"12. That the offence will not be deposited so as to release the liability of the neutral even by the entry of the offending vessel in a port of the belligerent, and there becoming a man-of-war, if any part of the original fraud continues to hang about the vessel."

Her Majesty's Government must observe, with all respect for the Government of the United States, that it can neither admit nor deny propositions to which it finds itself unable to attach a distinct meaning. It is not for the British Government to contend that any obligation, either of a Government or of an individual, which has not been fulfilled, can be discharged by subsequent proceedings, such as are here supposed, of other parties. But if it be meant to suggest that, in any such case, the default of the neutral Power is not limited to the acts done or omitted to be done on its part, within its own territory, but is to be deemed a continuing default, or series of defaults, during the whole or some part of the subsequent proceedings of the offending vessel beyond its jurisdiction, the British Government must demur altogether to such a doctrine, as unknown to international law, and opposed to reason and principle.

Argument of the United States. Effect ascribed to British Laws and Regulations as Interpretations of International Law.

Effect ascribed to British laws and regulations as interpretations of International Law.

The differences which exist between the British Government and that of the United States arise partly in the statement of principles, but more in the application of them to facts admitted or proved. The latter Government has prefixed to its twelve propositions a lengthened argument, which appears to be designed to prove that, if not true in themselves, they are true against Great Britain; and that, if true in themselves, they ought to be applied against her with exceptional and peculiar rigour. This argument appears to the British Government to contain errors of the gravest kind.

The source of these errors is manifest. The Government of the United States is not satisfied to rely upon the three Rules embodied in the Treaty, coupled with the general principles of International Law not inconsistent with them, as sufficient to support the claims urged against Great Britain. It desires, therefore, to persuade the Arbitrators to apply to the conduct of Great Britain, not the general standard of neutral obligation which, under corresponding circumstances, they would apply to the United States, or to any other Power which had accepted those Rules, but a stricter and more rigorous standard, drawn from the municipal laws of Great Britain, from administrative acts of the British Government, or from declarations of British statesmen.

The positions contended for by the United States are in substance as follows:—

1. The municipal laws of Great Britain and the administrative acts of her Government are to be regarded as defining as against herself her conception of her international duties. What these laws or acts prohibit, she must be assumed to regard as prohibited by the law of nations, and by that standard she must be tried. In short, where her conception of international duty, thus measured, appears to fall short of the common standard, it is to be disregarded; in every other case it is to be assumed as the measure of what she owes to other nations, though not as the measure of what other nations owe to her.

2. Independently of this theory, Great Britain is under an international obligation to

execute her municipal laws and enforce her Proclamations and Ordinances where they are for the advantage of other nations.

Argument o United States on neutral duties.

3. In the performance of these duties Great Britain is bound to use "due diligence," by which is meant an exercise of active vigilance and an effectual use of all the means within the power of the Government.

Effect ascribed to British laws and regulations.

4. Failing to use this due diligence, Great Britain is bound to make compensation for any injury resulting from such failure.

It is necessary to state these positions clearly, because they are expressed with some vagueness in the Case of the United States.

Such, then, is the general measure of neutral duties which the Government of the United States has adopted, and endeavours to persuade the Arbitrators to adopt, in support of its claims against Great Britain.

To state the first of this series of positions is to confute it, If it were a true assumption that the municipal laws of a State, wherever they prohibit acts which may affect the security or interest of other States, must have been founded, not on considerations of policy and expediency, but on conceptions of international obligation, it would nevertheless be impossible to contend, with any show of reason, that, by these conceptions, and not by the general rules of the law of nations, the State was to be judged in any international controversies in which it might become engaged. Such a rule, it is evident, would produce the most fantastic consequences. In place of a common and equal standard of obligation, we should then have a varying and unequal one, varying with the nations to which it was applied, and with the notions of duty which they might from time to time entertain. It would be as reasonable to contend that a question between private litigants ought to be decided, not by the law, but by what the defendant had supposed to be the law, provided that the plaintiff could show that the difference was in his own favour.

It is not, however, a true assumption that whatever the laws of a State prohibit in matters affecting the security or interests of other States, it must have held itself bound to prohibit by force of an international obligation. This is a hypothesis as groundless as it is unreasonable. For the primary and immediate object of municipal law is the protection of the security and interests of the State itself and its citizens; and it is clear that, with a view to this object, it may be, and frequently is, expedient to prohibit in relation to other States acts not prohibited by the law of nations. The theory of the United States would assume that this never is or can be expedient.

This observation applies with all its force to those municipal laws which are sometimes styled "Neutrality Laws." Such laws belong to the class which, in the codes of some European nations, are described as having for their object the protection of the internal and external security of the State. Thus, by the Penal Code of France it is made an offence to levy or enrol soldiers without the authority of the Government, and penalties of various degrees of severity are denounced against any persons who, by acts not approved by the Government, may have exposed French citizens to reprisals or the State to a declaration of war. These provisions have been adopted in the Penal Code of the Kingdom of Italy, in that of the Netherlands, and by other countries.

The law known in England as the Foreign Enlistment Act of 1819 belongs to the same class. The considerations on which it is founded are thus stated in the preamble:—

"Whereas the enlistment or engagement of His Majesty's subjects to serve in war in foreign service without His Majesty's license, and the fitting out and equipping and arming of vessels by His Majesty's subjects without His Majesty's license, for warlike operations in or against the dominions or territories of any foreign Prince, State, or Potentate, or persons exercising or assuming to exercise the powers of Government in or over any foreign country, colony, province, or part of any province, or against the ships, goods, or merchandize of any foreign Prince, State, Potentate, or persons aforesaid, or their subjects, *may be prejudicial to, and tend to endanger the peace and welfare of this Kingdom*, and whereas the laws in force are not sufficiently effectual for preventing the same; be it therefore enacted," &c.

Laws of this kind serve, amongst other purposes, that of enabling or assisting the State which enacts them to discharge, when a neutral in war, the duties, and protect the rights, of neutrality, and they may therefore with perfect propriety be described as having that object in view. But their main, though not always their sole, purpose, is to restrain whatever may tend to imperil the relations of the State with foreign Powers; they are framed on those considerations of expediency by which all legislation is governed; and, as they may stop short in some respects of the provisions of international law, so they may transcend them in others.

It has sometimes been argued indeed, though not with success, that the law of nations should be regarded as furnishing an interpretation of the Foreign Enlistment Act,

Part II.

Argument of the United States on neutral duties.

and confining its scope to acts which can be shown independently to be within the prohibitions of that code.* But that the Act should, on the contrary, be viewed as extending the prohibitions of the law of nations, was never, to the knowledge of Her Majesty's Government, contended by any one, and such an argument would certainly receive no attention from any judicial tribunal.†

Effect ascribed to British laws and regulations.

The Government of the United States has appealed in support of this erroneous notion to certain English authorities; and the manner in which it has referred to them cannot be left unnoticed. The following sentence is given as a quotation from a despatch signed by Earl Russell:—"That the Foreign Enlistment Act is intended in aid of the duties * * of a neutral nation."‡ What were the words of Earl Russell? They were these:—"That the Foreign Enlistment Act, which was intended in aid of the duties *and rights* of a neutral nation, can only be applied," &c. The meaning of the sentence is altered by leaving out two of the most important words. Again, the Report of a Commission appointed in 1867 to consider the laws of Great Britain "available for the enforcement of neutrality," is thus referred to:—

Case of the United States, p. 29.

"The Tribunal of Arbitration will search the whole of that Report, and of its various Appendices, in vain, to find any indication that that distinguished body imagined, or thought, or believed that the measures which they recommended were not 'in full conformity with international obligations.' On the contrary, the Commissioners say that, so far as they can see, the adoption of the recommendations will bring the municipal law into full conformity with the international obligations. Viewing their acts in the light of their powers and of their instructions, the United States feel themselves justified in asking the Tribunal to assume that that eminent body regarded the acts which they proposed to prevent by legislation, as forbidden by international law."§

Ibid., p. 31.

What is the passage which the Government of the United States has referred to, but has refrained from extracting? It is this:—

"*In making the foregoing recommendations we have not felt ourselves bound to consider whether we were exceeding what could actually be required by International Law*, but we are of opinion, that if those recommendations should be adopted, the municipal law of this realm available for the enforcement of neutrality, will derive increased efficiency, and will, so far as we can see, have been brought into full conformity with your Majesty's international obligations."‖

* See the argument of the Counsel for the Defendants in the "Alexandra" case (Appendix to the Case of the United States, vol. v, pp. 183 *et seq.*)

† A construction contrary to that which the United States contend for against Great Britain, has been placed by the Government of the United States on its own law. In 1841 the then Attorney-General was called upon to advise whether the building in the United States of vessels of war for the Government of Mexico, to be employed against Texas, was prohibited by the Act of 1818. Mr. Legaré advised (whether rightly or wrongly is not material) that it was so, on the following grounds:—"The reasoning on this subject is shortly this, the policy of this country is, and ever has been, perfect neutrality and non-interference in the quarrels of others; but by the law of nations that neutrality may, in the matter of furnishing military supplies, be preserved by the two opposite systems, viz., either by furnishing both parties with perfect impartiality, or by furnishing neither. For the former branch of the alternative, it is superfluous to cite the language of publicists, which is express, and is doubtless familar to you. If you sell a ship of war to one of the belligerents, the other has no right to complain so long as you offer him the same facility. The law of nations allows him, it is true, to confiscate the vessel as contraband of war if he take her on the high seas; but he has no ground of quarrel with you for furnishing or attempting to furnish it. But, *with a full knowledge of this undoubted right of neutrals, this country has seen fit, with regard to ships of war, to adopt the other branch of the alternative*—less profitable with a view to commerce, but more favourable to the preservation of a state of really pacific feeling within her borders; she has forbidden all furnishing of them under severe penalties. The memorable Act of 1794 consecrated this policy at an early period of our Federal history, and that Act was only repealed in 1818 to give place to an equally decided expression of the Legislative will to the same effect. Whatever may be thought of the spirit and policy of the law, its scope and objects are too clear to be misunderstood; and I am of opinion that the case stated by Mr. Curtis falls fully within the purview of the third section."

Mr. Legaré afterwards wrote a further opinion to the same effect, holding that "all trading with a belligerent in ships of war ready equipped for service was contrary to the law of the United States." "The accompanying prohibition in the statute of all enlistments in the United States furnishes a strong ground to support this opinion. *Such enlistments (if voluntary) are no more against the law of nations than equipping and furnishing ships;* yet it will not be pretended that any attempt to enlist an American citizen within our borders, however covert and cautious, and wherever the service is to be rendered or the first step towards it taken, is not utterly prohibited by the Act. However popular opinion may have recently changed on so important a subject, this Act, like that of 1794, was intended to secure, beyond all risk of violation, the neutral and pacific policy which they consecrate as our fundamental law. The framers of both Acts *knew perfectly well that they were denying to our citizens rights which the law of nations allowed them to exercise in good faith for commercial purposes.* They knew the price they were paying for peace, but they were willing to pay it. This Act is a proof of it." (Opinions of Attorneys-General of the United States, vol. iii, pp. 738, 741; Appendix to British Case, vol. v, pp. 360-363.)

‡ Case of the United States, p. 108.

§ Ibid., p. 116.

‖ See Report of the Commission, p. 7. Appendix to British Case, vol. iii. Appendix to Case of the United States, vol. iv, p. 82.

Thus by leaving out the words in which the Commissioners observe that their recommendations may exceed the requirements of International Law, and by using in one sense words which (as the context proves) they employed in another, they are represented as saying the very thing which they expressly guarded themselves from being supposed to say, namely, that all the acts which they proposed to prohibit were, in their judgment, already forbidden by International Law.*

Argument of the United States on neutral duties.

Effect ascribed to British laws and regulations.

The Government of the United States further assumes that the same false principle is to be applied not only to laws, but to the proclamations, orders, and regulations issued during a war by neutral nations. These also are to be supposed to prohibit nothing which the Government that issues them does not believe to be interdicted by international law.

Her Majesty's Government had supposed that the nature of these acts and orders was a thing perfectly well understood by the United States, as it certainly is by maritime nations in general. They are universally understood to be acts done in the free exercise of that right which every Sovereign State possesses to regulate the access of belligerent vessels to its ports. They convey no admission whatever that what they enjoin is enjoined, or that what they prohibit is prohibited, by the law of nations. In some cases this may be so; commonly it is not so. But the acts themselves, whether they happen to coincide with rules of international law or not, are voluntary and discretionary. They are done in exercise of a right, not in performance of an obligation.

The foregoing remarks have been drawn from the British Government by the attempt made in the Case of the United States to introduce into this controversy an assumption which is clearly erroneous—the assumption, namely, that whatever is or was prohibited by British law or by the Orders or Proclamations of the British Government ought, as against Great Britain, to be held to be prohibited by the law of nations.

Thus it is asserted† that all the acts prohibited by the 2nd, 5th, 6th, 7th, and 8th sections of the Foreign Enlistment Act must be held, as against Great Britain, to be acts which a neutral Government "ought," or "was bound," not to permit to be done within its jurisdiction, and were violations of the international duties "of a neutral;" that the Foreign Enlistment Act defines and recognizes the "principles and duties" "obligatory on the nation in its relations with other Powers;" that the Act of 1870 was "intended, *at least as against the British Government*, as a re-enactment of the law of nations;" that the restrictions placed by the British Government on the stay of belligerent vessels in its ports are to be regarded as commanded by international law, instead of being what they really were, regulations issued in the free exercise of the Sovereign rights of a neutral Power; lastly, that the supposed rules or principles of international law thus extracted from British laws and ordinances may and ought to be applied by the Tribunal *against Great Britain*, without being recognized by it as applicable under like circumstances against other neutral nations in general.

Case of the United States, pp. 29, 30, 32, 34, 57.

Her Britannic Majesty's Government declares, on the contrary, in the most explicit manner, that the law to which it has submitted its conduct, and by which it has consented to be tried, is the International Law recognized in common by all civilized States, coupled with the three Rules embodied in the Treaty; that this law is to be gathered, not from British statutes or ordinances, but from the general consent of nations, evidenced by their practice; and that the laws and ordinances of Great Britain herself can be appealed to only for the single purpose of proving that her Government was armed with sufficient power to discharge its international duties, and not for the purpose of extending, any more than of restricting, the range of those duties.

Alleged duty of a Government to enforce its own laws and regulations.

Argument of the United States. Alleged duty of a Government to enforce its own Laws and Regulations.

At page 211 of its Case, the Government of theUnited States lays down, as against Great Britain, the general proposition that a neutral is bound to enforce its laws and its

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* At p. 117 of the Case, the Judge of the High Court of Admiralty (Sir R. J. Phillimore) is cited as having stated (very justly) that the Act of 9th August, 1870, has the effect of enabling the British Government to fulfil more easily than heretofore that particular class of international obligations which may arise out of the conduct of Her Majesty's subjects towards belligerent foreign States with which Her Majesty is at peace. No doubt it has. This quotation is as irrelevant as those introduced at pp. 118-122, in order to prove that the law of nations has been regarded as forming part of the common law of England—a proposition sometimes stated too largely, but which, correctly understood, has been denied by no one, and in no way assists the argument of the United States.

Page 31.

Pages 32, 33.

† Case of United States, pp. 109, 110, 118, 125, 210, 212.

Argument of the United States on neutral duties.

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Alleged duty of a Government to enforce its own laws and regulations.

"executive proclamation." It appears to contend for the same proposition at page 103. But at pages 122, 123, it expressly guards itself against being supposed to admit that Great Britain, against whom this supposed principle is pressed, would herself, if the case were reversed, be entitled to the advantage of it against the United States or against other nations. The Arbitrators, therefore, are solicited to assume that Great Britain was bound to enforce her laws and ordinances so far as they were in favour of the United States, with the understanding that the decision is not to imply that any corresponding obligation was, or is, incumbent on the United States or on other Powers towards Great Britain.

In defence of this extraordinary suggestion it is pleaded that "in 1793, during General Washington's administration, the representative of Great Britain in the United States pointed out to Mr. Jefferson, who was then Secretary of State, acts *which were deemed by His Britannic Majesty's Government to be 'breaches of neutrality'* done in 'contravention of the President's Proclamation' of Neutrality, and he invited the United States to take steps for the repression of such acts and for the restoration of captured prizes," and that "it appears that the United States complied with these requests." It will be seen that the representations then made on the part of this country to the United States were founded on the character of the acts themselves, which were deemed by the British Government to be breaches of neutrality, and not upon the fact that they were prohibited by the President's proclamation. Further comment on this supposed precedent, which will hereafter be examined for a different purpose, is here unnecessary.

The international duties which Great Britain acknowledges towards other States, she will at all times hold herself entitled to enforce against them. And she would not have expected that, under any circumstances, the United States could have taken a different view.

Disregarding the attempt to confine the operation of it to a single Power, Her Majesty's Government cannot admit the proposition for which the Government of the United States contends. Setting aside those cases in which the law or ordinance serves only as a means of enabling the Government to discharge an antecedent international obligation, and cases in which the omission to enforce it would be an instance of wilful partiality or a violation of an express or tacit engagement, it cannot be admitted that a State is bound by any international duty towards other States to execute or enforce its own ordinances or laws within its own territory. A State is bound to enforce the laws which afford protection to life and property, for the benefit of commorant foreigners, as well as for that of its own citizens; because it is a principle universally recognized that foreign residents obeying the laws are entitled to the protection which they bestow. Here there is an antecedent duty. But a State is not bound to enforce revenue laws of its own from which an incidental advantage may be reaped by some foreign nation or its citizens; for here there is no antecedent duty. Still less can it be allowed, in the absence of any antecedent obligation, that in executing its own laws a State is bound, in relation to other States, to the exercise of active vigilance and exact diligence, or that it owes them compensation for any loss they may conceive themselves to have sustained through a default in this respect. The comity of nations indeed, permits representations and remonstrances to be made by one Government to another in cases where no strict right exists. Nor is Her Majesty's Government disposed to deny that cases may occur in which, through a reasonable confidence that the laws and ordinances of a particular State would be executed according to their tenor, losses may have been incurred by another State or its citizens or subjects for which some reparation might fairly and equitably be made. But the claim for compensation in such cases arises from special circumstances, and appeals to international comity and an enlarged sense of equity, not to strict right. Great Britain is willing to go as far as any State has ever gone in this direction. The British Government has never denied—on the contrary, it has at all times freely and readily admitted—that the United States had reasonable ground to expect that the provisions of the Foreign Enlistment Act would, like the other municipal laws of Great Britain, be fairly executed even where they might exceed the ascertained limits of the law of nations. This consideration, and the wish that every cause of complaint on the part of the United States should be completely and effectually removed, together with the desire to make satisfactory provision for the future, induced Her Majesty's Government, in concluding the Treaty of Washington, to consent that a retrospective effect should be given to the three rules inserted in the VIth Article of that Treaty.

Recapitulation.

Recapitulation.

The conduct of Great Britain in this matter is to be tried by the three Rules of the Treaty of Washington, coupled with such general principles of international law, not

inconsistent with those rules, as may appear to have been applicable to the case. The general principles of international law are to be collected from those sources to which it is customary to have recourse, and not from the municipal law of Great Britain, nor from administrative acts or regulations of the British Government; and these are to be applied, as against Great Britain, in the same manner in which they would be applied, under like circumstances, against the United States or any other Sovereign State.

Argument of the United States on neutral duties.

Recapitulation.

Argument of the United States. Extent of Neutral Obligations as deduced from the Three Rules, and from General Principles of International Law.

Her Britannic Majesty's Government proceeds to remark upon that part of the Case of the United States in which the Government of the United States has explained and endeavoured to support its view of the extent of the duties of a neutral Power.

Extent of neutral obligations, as deduced from the three rules, and from general principles of international law.

The British Government deems it right here to observe that the questions submitted to the Tribunal are not of an abstract or speculative character. The Arbitrators have not to consider and determine what rules might with advantage be laid down for the regulation of the conduct of neutral Powers during war; what, under such rules, would have been the duty of Great Britain, or whether Great Britain acted in accordance with that standard of duty. They have to deal with facts. Injuries are alleged to have been inflicted by Great Britain and sustained by the United States. Reparation is claimed for those injuries. There can be no injury without some violation of a duty actually existing at the time.* The Arbitrators, before they decide against Great Britain, must be satisfied that there was such a violation of duty. They must be satisfied, therefore, in the first place, that the alleged duty really existed. They must be satisfied, further, that the violation, if any, was such that reparation may justly be awarded for it in money—that is, that it was the direct cause of some substantial and appreciable loss to the party claiming reparation.

The neutral duties which it is alleged by the United States that Great Britain failed to discharge, are of two classes, which should be kept distinct from each other. They relate to—

(A.) The original fitting out, arming, or equipping in neutral ports, of vessels intended for the naval service of a belligerent, and the original departure from the jurisdiction of the neutral of vessels intended for such service, and adapted for war wholly or in part within such jurisdiction;

(B.) The admission into the ports or waters of a neutral of vessels in the naval service of a belligerent, whether such vessels were or were not originally adapted for war within the jurisdiction of the neutral; and acts done by or in respect of vessels so admitted.

The question what measure of diligence or care may justly be demanded of a neutral Government in the prevention of acts on the part of its subjects or citizens which are inconsistent with neutrality, and the question in what cases and on what accounts reparation may justly be awarded, are again distinct from the foregoing, and have to be considered separately.

(A.) *Original Equipment, &c., of Belligerent Vessels in Neutral Ports.*

(A.) Original equipment of belligerent vessels in neutral ports.

As to neutral duties falling under the first of these heads, Her Britannic Majesty's Government adheres to what is laid down in the three Rules embodied in the VIth Article of the Treaty, and more particularly in the first of those Rules. The British Government is well convinced that these Rules go beyond any definition of neutral duty which, up to that time, had been established by the law or general practice of nations; but it refrains from arguing that question, holding that the discussion of it is precluded, except so far as may be necessary for the purpose of dealing with arguments founded on an assumed state of International Law, as distinct from an undertaking by Her Majesty to act upon the Rules. By common consent the Rules are, for the purposes of this arbitration, to be

* The general definition of "*culpa*" or "*faute*" applies to international injuries, as well as to injuries inflicted and sustained by individuals. "Le débiteur est en faute soit qu'il contrevient à l'obligation de ne pas faire, soit quand il n'exécute pas l'obligation de faire, soit quand il n'a pas apporté dans l'exécution ou dans l'accomplissement de cette obligation tous les soins auxquels il était tenu."—*Le Droit Civil Francais, par Zachariæ. annoté par G. Massé et Ch. Vergé, sec.* 548.

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Argument of the United States on neutral duties.

taken as applicable to the case; it is to be assumed, without dispute on either side, for the purpose of this arbitration, that the obligations which they purport to express were such as Great Britain had undertaken to perform.

Original equipment of belligerent vessels in neutral ports.

Since, however, the Government of the United States has thought proper to enter into the question at some length, Her Majesty's Government deems it not improper to repeat here a statement already made in its Case presented to the Tribunal.

"The case," it was there said, "of a vessel which is dispatched from a neutral port to or for the use of a belligerent, after having been prepared within the neutral territory for warlike use, is one which may be regarded from different points of view, and may fall within the operation of different principles. The ship herself may be regarded merely as an implement or engine of war, sold or manufactured to order within neutral territory, and afterwards transported therefrom, and the whole transaction as falling within the scope of the principles applicable to the sale, manufacture, shipment, and transportation of articles contraband of war; or, on the other hand, the preparation and despatch of the ship may be viewed as being really and in effect the preparation and commencement of a hostile expedition. The circumstances of each case can alone determine from which of these two points of view it may most fitly be regarded, and to which class the transaction ought to be assigned. But the difficulty of drawing a clear, precise, and intelligible line between these two classes of transactions has always been considerable in theory, and still greater in practice; and it was enhanced to the utmost during the Civil War by the ingenuity and audacity of American citizens, who were engaged in carrying on hostilities against the Government of the United States, and were desirous of availing themselves for this purpose of the shipbuilding and manufacturing resources of Great Britain. This will sufficiently appear from the narrative which follows; and it will be seen also how serious and incessant were the trouble and embarrassment which these enterprises occasioned to Her Majesty's Government. It is by the many difficulties encountered and by the experience acquired during the war that Her Majesty's Government was finally led to the conclusion that it was expedient not only to enlarge the scope of its municipal law in relation to this subject beyond what has hitherto been deemed necessary in any other country, but further, to accept for itself, and propose to other Powers, rules of international obligation somewhat more stringent and comprehensive than are to be found in earlier expositions of the law of nations."

The British Government believes that the Arbitrators would search in vain in text-books of acknowledged authority anterior to the Civil War, and in the general practice of maritime nations, for any proof or acknowledgment of a duty incumbent on neutral Governments to prevent their citizens or subjects from supplying belligerents with ships adapted for warlike use. They would find it, indeed, asserted, on the one hand, that among the duties of a neutral Government is that of preventing hostile expeditions in aid of either belligerent from being organized within and dispatched from its territory. They would not, on the other hand, find the sale or delivery to a belligerent by a citizen or subject of the neutral of a vessel adapted for war classed among the acts which the neutral Government is bound to prevent, nor would they find any distinction drawn in this respect between the sale and delivery of a vessel built to order and that of a vessel not built to order.*

It is true beyond controversy that, at the time when the events occurred out of which the claims of the United States have arisen, the mere sale and delivery of a vessel adapted for war in a neutral port to a belligerent, and the mere construction of such a vessel to the order and for the use of a belligerent, had not been declared by any authority to be acts which the neutral Government was under an obligation to prevent, or which violated any neutral duty. And it must never be forgotten that the obligations of International Law are such as have been received and acknowledged by the general consent of nations. No private opinions, or theoretical developments of the principles on which they are supposed to rest, can ever constitute new international obligations or enlarge the old, till they have been themselves generally acknowledged and received. It would seem, indeed, to be inconsistent with neutrality for a neutral Power to introduce or admit, during war, innovations on these subjects to the prejudice of either belligerent.

It is true also, that it was a question at the least of reasonable and serious doubt, whether either of these classes of acts was a contravention of the municipal law of England, or would have been a contravention of that of the United States. Simple justice demands that this should be steadily kept in view in determining whether, in any of the cases brought

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* Some citations bearing on this question are collected in an Annex (A) at the end of this Counter-Case.

before the Arbitrators, there was, on the part of the British Government or any of its subordinate officers, such a defect of promptitude or decision as to amount to culpable negligence. It is material to be borne in mind, in considering what facts were known to the Government, what those facts proved or did not prove, and what, upon the facts which were known to it and on which alone it could act, it was the duty of the Government to do.

It has been already stated to the Arbitrators, in the Case presented to them on the part of Great Britain, that, in the judgment of Her Majesty's Government and its official advisers, the special adaptation of a vessel to warlike use was among the acts prohibited by the Foreign Enlistment Act, provided there were sufficient proof that she was intended for the service of a belligerent, although the vessel might not be actually armed so as to be capable of immediate employment for war. The provisions of the Act are not, as has been already observed, to be regarded as declaratory of the law of nations. But Her Majesty's Government agrees that by the second clause of the First Rule it was the intention of the High Contracting Parties to preclude any question on this point from being raised before the Arbitrators, with reference to the words "fitting out, arming, or equipping" in the first clause.

Great Britain does not, on this or on any other point, desire to raise or dispute before the Arbitrators any doubtful or obscure questions of public law. She desires, on the contrary, that they should be relieved, as far as possible, from the necessity of considering such questions, and she expects from them a fair and just decision on ascertained facts, tried by the application of admitted principles, or of plain and legitimate inferences from admitted principles. She accepts as applicable to the case, and as substantially sufficient for an equitable adjudication on it, the proposition that a neutral Government, which has assented to the Rules laid down in the VIth Article of the Treaty, is bound—

"First; To use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable grounds to believe is intended to cruize or to carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruize or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use;

"Secondly; Not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men;

"Thirdly; To exercise due diligence in its own ports or waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties."

She accepts these rules, not with the refinements of meaning and the over-strained rigour of construction which are applied to them in the Case of the United States, but according to their obvious purport, and as they would naturally be understood by persons conversant with the law and practice of nations; and she maintains that the British Government did not at any time during the war, in respect of any of the vessels to which the claims of the United States relate or of any other vessels, fail to use the due diligence which the rules require.

(B.) *Admission of Belligerent Vessels into Neutral Ports.*

With respect to the admission of belligerent ships of war into neutral ports, the principles of the law of nations are clearly settled, not only by the general consent of publicists, but by a long and nearly uniform practice.

It is the right of a neutral Government, at its absolute discretion, either to refuse admission or to grant it, and extend to the vessels so admitted all the ordinary hospitalities of a friendly port, on such conditions, and subject to such regulations, if any, as the neutral Government may think fit to make; provided only that the same facilities be offered to both belligerents indifferently, and that such vessels be not permitted to augment their military force, or increase or renew their supplies of arms or munitions of war, within the neutral territory.

A neutral Government is not required by the law or practice of nations to place any restrictions whatever upon the liberty which it accords of purchasing provisions, coal, and other supplies (not being supplies of arms or munitions of war). It is not a principle or rule of the law of nations that the supplies purchased should be limited to the quantity necessary for enabling the vessel to gain the nearest port of her own country or of an ally. No such principle was ever, so far as Her Majesty's Government is aware, admitted or contended for by any maritime Power. On the contrary, it has been the constant practice

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Argument of the United States on neutral duties.

Admission of belligerent vessels into neutral ports.

to allow belligerent vessels to repair, refit and supply themselves with stores and fuel, with the avowed intention of continuing to cruize. So also belligerent ships may be either permitted or forbidden, at the pleasure of the neutral, to bring in prizes, to retain possession of them, or even to sell them, although there can be no condemnation of them as prize by any authority locally situate within the neutral territory. Special restrictions may undoubtedly be imposed by the neutral Government if it think fit, but they may be revoked at any time, and do not confer any right on either belligerent. All that a belligerent has a right to demand is, that restrictions imposed on him shall be imposed on his enemy likewise.*

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* These propositions are so familiar that they do not need to be supported by the citation of authorities. The subjoined extracts from some of the most recent writers of note may, however, serve to illustrate them :—

"Les règles relatives à l'accès et au séjour momentané des bâtiments dans les ports et dans les rades étrangers restent les mêmes en temps de paix qu'en temps de guerre. Sauf les limitations consenties par Traité, les ports, les rades et les mers territoriales neutres sont un asile ouvert aux bâtiments de guerre des belligérants, surtout lorsqu'ils s'y présentent en nombre limité ; ils y sont admis à s'y procurer les vivres nécessaires et à y faire les réparations indispensables pour *reprendre la mer et se livrer de nouveau aux opérations de guerre*, sans que l'Etat neutre viole par là les devoirs de la neutralité comme ils les violerait, au contraire, s'il accordait un traitement semblable à des troupes de terre belligérantes, qui viendraient chercher un refuge sur son territoire ; en pareil cas celles-ci doivent être désarmées et éloignées du théâtre de la guerre. Cette différence de traitement est attribuée communément par les publicistes, ainsi que l'énonce encore un auteur Allemand moderne, aux conséquences de l'immunité du pavillon et au principe que les navires de guerre sont une portion du territoire de la nation à laquelle ils appartiennent. Nous aimons mieux en chercher les véritables motifs dans les conditions si différentes de l'existence maritime et dans les nécessités indispensables de la navigation et de la vie des hommes sur un élément aussi terrible parfois que la mer."—Ortolan : *Règles Internationales et Diplomatie de la Mer* (4th edition), vol. ii, p. 286.

"Sous la réserve de ces diverses circonstances, l'asile que les navires de guerre et les corsaires réguliers des puissances belligérantes sont admis à recevoir dans les ports neutres s'applique aussi à ceux de ces navires qui arrivent avec des prises. Un Etat neutre n'ayant pas le droit de s'ingérer dans les résultats des actes exercés par un belligérant en conformité des lois de la guerre, du moment que le capteur a hissé le pavillon de l'Etat auquel il appartient à bord de la prise qu'il a faite, cette prise doit être considérée, provisoirement du moins, comme propriété de cet Etat ou de ses sujets ; et à ce titre on est fondé à réclamer pour elle l'hospitalité dans les ports amis.

"Cependant il ne faut pas perdre de vue que chaque Etat, ayant la propriété et la police de ses ports, est libre, en principe, d'en ouvrir et d'en fermer l'entrée, selon qu'il le juge convenable aux intérêts ou à la tranquillité du pays, et que les belligérants ne peuvent, par conséquent, en réclamer l'entrée, pour leurs navires ni pour les prises qu'ils ont faites, comme un droit qui leur appartiendrait."—Ibid., vol. ii, p. 303.

"Le droit d'asile maritime diffère essentiellement de celui que les neutres peuvent exercer en faveur des belligérants sur le territoire continental. Dans les guerres terrestres, lorsqu'une armée, fuyant devant son ennemi, vient se réfugier sur un territoire neutre, elle y est reçue, il est vrai ; elle y trouve tous les secours d'humanité. Mais l'armée est dissoute, les hommes qui la composent sont désarmés et éloignés du théâtre de la guerre : en un mot, on remplit les devoirs d'humanité à l'égard des individus, mais on n'accorde pas l'asile à l'armée prise comme corps. Le neutre qui, au lieu d'agir ainsi que je viens de le dire, accueillerait les troupes ennemies, leur fournirait des vivres, leur donnerait le temps de se remettre de leurs fatigues, de soigner leurs malades et leurs blessés, et leur permettrait ensuite de retourner sur le théâtre des opérations militaires, ne serait pas considéré comme neutre ; il manquerait à tous les devoirs de son Etat. L'asile maritime, au contraire, consiste à recevoir dans les rades fermées, même dans les ports, les bâtiments des belligérants, que leur entrée soit volontaire ou nécessitée par la tempête, par le manque de vivres ou par toute autre cause, même par la poursuite de l'ennemi. Les vaisseaux admis peuvent acheter les vivres qui leur sont nécessaires, réparer les avaries faites, soit par les accidents de mer, soit par le combat, soigner leurs malades ou leurs blessés, *puis sortir librement pour aller livrer de nouveaux combats*. Ils ne sont pas, par conséquent, soumis au désarmement comme les troupes de terre.

"Galiani et Azuni attribuent cette différence à celle qui existe entre la terre et la mer, entre les dangers qui menacent le marin et ceux auxquels est exposé le soldat. Ce dernier ne peut craindre que la défaite, et d'être pris par son ennemi, tandis que le premier peut souvent être exposé à périr sur les mers par la famine, à être englouti sous les flots, &c. Cette cause de différence peut être vraie, mais elle ne suffit pas pour motiver celle qui existe. En effet, si elle était unique, elle ne justifierait nullement l'absence de désarmement, surtout lorsqu'un bâtiment vient se jeter dans le port neutre pour échapper à la poursuite de l'ennemi, lorsqu'il vient y chercher un refuge contre une défaite, contre une prise inévitable. Il est vrai que Galiani propose de soumettre les vaisseaux qui profitent de l'asile au désarmement. Mais il reconnaît que cette règle n'est pas admise par les nations, qu'elle est complétement nouvelle, et que le petit nombre d'exemples, que l'on pourrait citer, de bâtiments contraints à désarmer pour pouvoir être admis à jouir de l'asile du port neutre, s'applique à des armateurs dont la conduite seule motivait cette exigence extraordinaire.

"Azuni va beaucoup plus loin : il veut que tout bâtiment qui entre dans un port neutre, pour se soustraire à la poursuite de l'ennemi, soit tenu non-seulement de désarmer immédiatement, s'il est armé en guerre, mais encore de ne plus naviguer pendant tout le temps de la guerre. Et, d'après la manière absolue dont il s'exprime il est évident qu'il applique cette règle même aux navires du commerce.

"Il y a donc à cette différence immense une autre cause qu'il est utile de rechercher. Je crois qu'elle est tout entière dans la qualité reconnue du bâtiment. Il est une partie du territoire de son pays ; pour tout ce qui concerne son gouvernement intérieur, il est exclusivement placé sous la juridiction de son souverain. Or, il est évident qu'ordonner le désarmement, c'est s'immiscer dans le gouvernement intérieur du vaisseau, c'est faire un acte de juridiction sur le vaisseau ; le Prince neutre n'a pas le droit de le faire. Il peut refuser l'asile ; il peut l'accorder seulement sous certaines conditions, avec des restrictions. S'il veut remplir les devoirs d'humanité, arracher le bâtiment aux périls qui peuvent le menacer, il le reçoit dans ses ports, il lui accorde les secours nécessaires pour le mettre en état de reprendre la mer. Tel est, à mon avis, le seul motif de la différence dont je viens de parler."—Hautefeuille : *Droits et Devoirs des Nations Neutres*, vol. i, p. 347.

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First limitation suggested by the United States.

It has been necessary for Her Britannic Majesty's Government to recall the attention of the Tribunal to these well-known and elementary maxims, because the Government of the United States has not only endeavoured to fix upon the regulations and instructions which the British Government deemed it expedient to issue during the war to its own officers a character which they did not possess, that of acknowledgments or recognitions of rules obligatory under the law of nations; it has further insisted upon a construction of the words of the Second Rule which no neutral nation could safely accept, and which was not in the contemplation of Great Britain at the time when they were agreed to.

The novel limitations which it is attempted thus to introduce are in the following passage mingled with limitations which at present exist and are recognized by established usage:—

"The ports or waters of the neutral are not to be made the base of naval operations by a belligerent. Vessels of war may come and go under such rules and regulations as the neutral may prescribe; food and the ordinary stores and supplies of a ship not of a warlike character may be furnished without question, in quantities necessary for immediate wants; the moderate hospitalities which do not infringe upon impartiality may be extended; but no act shall be done to make the neutral port a base of naval operations. Ammunition and military stores for cruisers cannot be obtained there; coal cannot be stored there for successive supplies to the same vessel, nor can it be furnished or obtained in such supplies; prizes cannot be brought there for condemnation. The repairs that humanity demand can be given, but no repairs should add to the strength or efficiency of a vessel, beyond what is absolutely necessary to gain the nearest of its own ports. In the same sense are to be taken the clauses relating to the renewal or augmentation of military supplies or arms and the recruitment of men. As the vessel enters the port, so is she to leave it, without addition to her effective power of doing injury to the other belligerent. If her magazine is supplied with powder, shot, or shells; if new guns are added to her armament; if pistols or muskets or cutlasses, or other implements of destruction, are put on board; if men are recruited; even if, in these days when steam is a power, an excessive supply of coal is put into her bunkers, the neutral will have failed in the performance of its duty."* Case of the United States, p. 45.

According to this interpretation a neutral Government which should suffer a belligerent cruiser to effect any repairs beyond what are absolutely necessary for gaining the nearest of its own ports, or to receive more coal than would be enough for the same purpose, would commit a breach of neutral duty. It may, indeed, sometimes be found convenient by neutral Powers to impose restrictions of this nature, more or less stringent, on the armed vessels of belligerents admitted into their ports; and this was done by Great Britain during the Civil War. But such restrictions were not then, and are not now, dictated by any rule of international obligation. Were they to become such, and were the obligation to be construed against the neutral with the breadth and rigour for which the United States contend, it may be feared that neutral Powers would rarely be secure against complaints and demands for compensation on the part of one belligerent or another.

Having constantly during the war used British ports as places of resort for its own cruisers, and having repeatedly obtained for them therein successive supplies of coal, which were consumed, not in returning home, but in cruising, the Government of the United States now appears to represent this very act as a breach of neutral duty, and to hold Great Britain liable for any cases in which Confederate vessels may have succeeded in obtaining similar facilities.

This question, however, does not regard Great Britain alone. The Government of the United States has plainly declared that it regards these Rules as no more than a statement of previously established rules of International Law.† So far as regards the Second Rule, Ibid. p. 40. See also p. 44.

"Tambien es costumbre permitir en ellos (puertos neutrales) á los buques armados, públicos y particulares, proveerse de víveres y otros artículos innocentes. Es lícito á los beligerantes llevar sus presas á puerto neutral y venderlas en él, si no se lo prohibe el soberano del territorio, á quien es libre conceder este permiso ó rehusarle, observando con ambos beligerantes una conducta igual."—Pando: *Elementos del Derecho Internacional*, § 192.

Even the prohibition of the purchase of arms and munitions of war by a belligerent vessel in a neutral port has been questioned by Heffter. "Es wäre indessen hart," he says, "einen Krieger wehrlos seinen Feinden Preis zu geben, auch ist Verkauf im eigenen Lande den Neutralen überhaupt nicht verboten."—*Das Europäische Völkerrecht*, p. 2st, note 2 (5th edition).

* Case of the United States, p. 167.

† Case of the United States, pp. 148, 149. See also p. 162, and the President's Message to Congress, 4th December, 1871.—"The Contracting Parties in the Treaty have undertaken to regard as between themselves certain principles of public law, for which the United States have contended from the commencement of their history. They have also agreed to bring those principles to the knowledge of the other maritime Powers, and to invite them to accede to them."

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Her Britannic Majesty's Government concurs in this view. The expressions upon which the United States rely belong to a class in common use among publicists, who, in attempting to define the duties of neutrality, are accustomed to employ these words or others equivalent to them, and of not less extensive meaning. Thus the phrase "base of naval operations," employed in this connection, denotes the use of neutral territory by a belligerent ship as a station or point of departure where she may await, and from whence she may attack her enemy. That these expressions have not hitherto received the construction which the United States would put upon them, is certain. Whether they are to receive it in future, is a question which concerns not Great Britain only, but all other Powers which may hereafter find themselves neutral in maritime warfare.*

Further Limitation suggested by the United States.

Further limitation suggested by the United States.

The Government of the United States insists further that the general right of neutral Powers to allow free entrance into and egress from their ports to belligerent ships of war is subject to one important exception. This exception relates to vessels which have been originally adapted for war wholly or in part within the jurisdiction of the neutral. It is insisted that the neutral Government is bound to seize and detain such vessels whenever they may enter its ports; that this is a duty which it owes to the other belligerent, and by the non-performance of which it becomes liable to a demand for compensation.

In the view of the United States this also is a general rule of International Law, which existed before the Treaty of Washington, binding on all neutral Powers, and is expressly affirmed also as between the United States and Great Britain by the first of the Three Rules.

It is stated as follows:—

"A neutral Government is bound, first, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruize or to carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruize or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use." "The United States invite the particular attention of the Tribunal to the continuing character of the second clause of this rule. The violation of the first clause takes place once for all when the offending vessel is fitted out, armed, or equipped within the jurisdiction of the neutral; but the offence under the second clause may be committed as often as a vessel, which has at any time been specially adapted, in whole or in part, to warlike use, within the jurisdiction of the neutral, enters and departs unmolested from one of its ports.

* A distinction has sometimes been drawn between such hospitalities as humanity requires to be granted to all belligerent vessels, and such as the neutral may concede or refuse at discretion (see the opinion of Mr. Cushing, then Attorney-General of the United States, on the case of the Sitka, Appendix to British Case, vol. v, p. 366). "Whether or not," says Mr. Cushing, "a neutral nation has the right to refuse absolutely the admission of any belligerent ship into her ports, is an abstract question, which it is unnecessary to discuss here. It suffices to say that the general duties of humanity require that the belligerent be allowed to enter for the purpose of escaping from the danger of the seas, or purchasing provisions and making repairs, indispensable to the continuance of the voyage. Everything accorded beyond this must be regarded as an act of international sociability or comity, not of humanity or obligation. . . . In the present state of the law of nations, it is universally conceded that the armed ships of a belligerent, whether men-of-war or private armed cruizers, are to be admitted, with their prizes, into the territorial waters of a neutral for refuge, whether from chase or from the perils of the sea. This is a question of mere temporary asylum, accorded in obedience to the dictates of humanity, and to be regulated by the specific exigency.

"Going beyond this, we find that the ships of war of a belligerent are generally admitted into the ports or the neutral, even when there is no exigency of humanity, but still under certain reservations. The neutral nation has a perfect right so to measure the extent of the asylum thus accorded, as to cover its own safety and retain the means of enforcing respect for its own sovereignty. Thus, in Europe, it generally happens that war is commenced between two or three of the great Powers for purposes of mutual jealousy or ambition of their own, and as to which the other States are comparatively indifferent in feeling or interest, or have conflicting interests, which impel them to remain neutral in the war. But, very soon, as the burden of the war presses on one or another of the belligerents, he, having undertaken more than he can accomplish alone, seeks to persuade or compel the neutral State to join him. Or he cannot efficiently attack his enemy without occupying the territory of some neutral State. Or, perceiving that his own commercial resources are wasting away in the war, he looks resentfully on the prosperity of some neutral State, whose commerce flourishes at his expense. Or, jealous of the intentions of a neutral State, and fearing it may join his enemy, he seeks to anticipate such an event by crippling the military forces of such neutral State. Or, finally, becoming fatally engaged in a protracted war, until it has at length degenerated into a mere wilful contest of pride and passion, the belligerent enters upon the desperate and frantic plan of starving his adversary by cutting off all neutral commerce, the very attempt to do which is an outrage on the law of nations, and can be carried out only by the perpetration of every kind of violence and fraud on the neutral nations." He proceeds to observe that "it is not material whether such regulations operate to the benefit of one or the other belligerent Power." The argument of the United States now is, that any hospitalities afforded to belligerent vessels in neutral ports, beyond those which Mr. Cushing described in 1855 as commanded by the dictates of humanity and obligatory on all neutral Powers, are violations of neutral duty.

Every time that the Alabama, or the Georgia, or the Florida, or the Shenandoah came within British jurisdiction, and was suffered to depart, there was a renewed offence against the sovereignty of Great Britain, and a renewed liability to the United States."*

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The words "specially adapted for warlike use" include, according to the United States, any adaptation whatever "for the hostile use of a belligerent, whether that adaptation began when the keel was laid to a vessel intended for such hostile use or whether it was made in later stages of construction, or in fitting out, or in furnishing, or in equipping, or in arming, or in any other way."† In every case in which anything whatever had been done, however slight, to fit the vessel for warlike use (for the language of the United States is framed with studied care to embrace every possible act of adaptation), the obligation, with its attendant liability, attaches on the neutral Government.

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This duty seems to have, according to the United States, no limit of time. It applies to vessels which have "at any time" received any partial adaptation for warlike use in the building-yards, docks or waters of the neutral country; it applies to public ships of war, commissioned by a belligerent Power; and it applies to them indifferently whether the act or acts of adaptation took place after they were commissioned, or before it and before they came into the possession of the commissioning Power. Literally, it might even be taken to apply to cases in which the adaptation had taken place for purposes totally unconnected with the particular war, or with either of the belligerents. Had the United States intended to limit in any way their peculiar interpretation of the clause, they might have been expected to state the limitation. But it is clear that they had no such intention, for they have been careful to employ the widest and most comprehensive language they could possibly command.

Case of the United States, p. 44.

It can hardly be necessary to say that this pretended obligation, whereby a neutral Government would be bound to seize by force any public armed ship which might enter its ports, and of which there might be reason to believe that she had at any time before received some partial adaptation for war within the jurisdiction of the neutral, is entirely unknown to the law, unsupported by practice, and in direct conflict with the principles which have hitherto governed the admission of public ships of war into the ports of friendly nations.

This would alone be sufficient to condemn the interpretation of the second Rule suggested by the United States, even if it could, with any plausibility, be represented as the natural meaning of the words employed. But it is not their natural meaning. No one who desired to lay down such a principle would clothe it in such language. It is clear that these words point to a departure following the special adaptation, whilst the hostile purpose still rests in intention, and the vessel may still, by due diligence, be prevented from quitting the neutral territory to carry that purpose into execution; and that they could not, without violence, be applied to a case in which the ship, having succeeded in effecting her departure, and finally quitted the neutral jurisdiction, has subsequently re-entered it at an indefinite distance of time; when, instead of being merely "intended for warlike use," she is known to be actually engaged in hostile operations; and when her original character has been exchanged for that of a public ship of war, recognized as such in the ports of other neutral States, and exempt as such from all local jurisdiction. Unless a violation of neutrality had been established in due course of law against such a vessel, while properly subject to the neutral jurisdiction, the question of fact whether such a violation had taken place could not, by any form of proceeding, be investigated between the neutral Power and the belligerent whose flag she bore. Even if the proof of the facts, in *foro competente*, were as easy as it has been generally found difficult, the belligerent Power would justly deny the right of the neutral to exercise jurisdiction over a vessel forming part of its public maritime force, for the purpose of any such inquiry. And to detain a public ship of war in a neutral port for acts done before she had obtained that character, without any previous notice that she was not at liberty to come in upon the usual terms, would be in itself an act of war, and a plain violation of well-settled rules of international comity.

Her Britannic Majesty's Government observes with sincere regret that, as in other particulars, so more especially in this, the Government of the United States, instead of accepting in a fair and reasonable sense Rules which the two Powers have engaged to observe towards one another and to recommend for adoption to other States, seems on this occasion to have considered how they might be turned to the greatest advantage in the present controversy, and with that view to have strained the construction of them to the very utmost. The undue extension which it is proposed to give to the First Rule does not accord with its plain and natural meaning, was never contemplated

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* Case of the United States, p. 163.

† Ibid., p. 162.

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by the Government of Her Britannic Majesty, and is altogether rejected by Great Britain.

The British Government concurs with the Government of the United States in holding that a vessel which has become liable to arrest and seizure, within neutral jurisdiction, by reason of a violation of neutrality, cannot relieve itself from that liability by merely removing to another place within the same jurisdiction, and that the duty of the neutral Government to seize and detain, where such a duty exists, would not be affected, though the execution of it might without any want of due diligence be embarrassed or prevented, by the mere fact of such removal. The orders issued for the seizure of the Alabama under the powers of the Foreign Enlistment Act would have been executed at Queenstown or Nassau, had she gone from Liverpool to either of those places, exactly as they would have been executed at Liverpool if they had arrived in time. But the Alabama, when she touched for the first time at a port of a British Colony, had for more than six months been commissioned and in active service as a cruiser of the Confederate States; had, as such, fought a successful action with a United States' war steamer; and, as such, had been received at the French island of Martinique, as she afterwards was at Fernando de Noronha, Bahia, and Cherbourg. And, in matters relating to the war, it was the duty of Great Britain, as it was the duty of other neutral Powers, to treat the Alabama in exactly the same manner as, under corresponding circumstances, they would have treated a public ship armed and commissioned by a recognized sovereign State.

Her Majesty's Government, in its Case presented to the Tribunal of Arbitration, has stated the following propositions:—*

"Maritime war being carried on by hostilities on the high seas, and through the instrumentality (ordinarily) of vessels commissioned by public authority, a neutral Power is bound to recognize, in matters relating to the war, commissions issued by each belligerent, and captures made by each, to the same extent and under the same conditions as it recognizes commissions issued and captures made by the other.

"Where either belligerent is a community or body of persons not recognized by the neutral Power as constituting a sovereign State, commissions issued by such belligerent are recognized as acts emanating, not indeed from a sovereign Government, but from a person or persons exercising *de facto*, in relation to the war, the powers of a sovereign Government."

"Public ships of war in the service of a belligerent, entering the ports or waters of a neutral, are, by the practice of nations, exempt from the jurisdiction of the neutral Power. To withdraw or refuse to recognize this exemption without previous notice, or without such notice to exert, or attempt to exert, jurisdiction over any such vessel, would be a violation of a common understanding, which all nations are bound by good faith to respect.

"A vessel becomes a public ship of war by being armed and commissioned, that is to say, formally invested by order or under the authority of a Government with the character of a ship employed in its naval service and forming part of its marine for purposes of war. There are no general rules which prescribe how, where, or in what form the commissioning must be effected, so as to impress on the vessel the character of a public ship of war. What is essential is, that the appointment of a designated officer to the charge and command of a ship likewise designated be made by the Government or the proper Department of it, or under authority delegated by the Government or Department, and that the charge and command of the ship be taken by the officer so appointed. Customarily, a ship is held to be commissioned when a commissioned officer appointed to her has gone on board of her and hoisted the colours appropriated to the military marine. A neutral Power may indeed refuse to admit into its own ports or waters as a public ship of war any belligerent vessel not commissioned in a specified form or manner, as it may impose on such admission any other conditions at its pleasure, provided the refusal be applied to both belligerents indifferently; but this should not be done without reasonable notice.

"The act of commissioning, by which a ship is invested with the character of a public ship of war, is, for that purpose, valid and conclusive, notwithstanding that the ship may have been at the time registered in a foreign country as a ship of that country, or may have been liable to process at the suit of a private claimant, or to arrest or forfeiture under the law of a foreign State. The commissioning Power, by commissioning her, incorporates her into its naval force; and by the same act which withdraws her from the operation of ordinary legal process assumes the responsibility for all existing claims which could otherwise have been enforced against her."

* British Case, pp. 4, 23, 24.

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The principle on which these rules repose is thus explained by Ortolan:—

"S'il s'agit de navires de guerre, la coutume internationale est constante; ces navires restent régis uniquement par la souveraineté de leurs pays; les lois, les autorités, et les juridictions de l'Etat dans les eaux duquel ils sont mouillés leur restent étrangères; ils n'ont avec cet Etat que des relations internationales par la voie des fonctionnaires de la localité compétents pour de pareilles relations.

"Cette coutume est-elle fondée en raison? peut-elle être défendue même au point de vue théorique? ou bien mérite-t-elle le blâme que quelques esprits paraissent vouloir jeter sur elle, ou les restrictions que d'autres s'efforcent d'y apporter?

"Le navire de guerre portant en son sein une partie de la puissance publique de l'Etat auquel il appartient, un corps organisé de fonctionnaires et d'agents de cette Puissance dans l'ordre administratif et dans l'ordre militaire, soumettre ce navire et le corps organisé qu'il porte aux lois et aux autorités du pays dans les eaux duquel il entre, ce serait vraiment soumettre l'une de ces Puissances à l'autre; ce serait vouloir rendre impossibles les relations maritimes d'une nation à l'autre par bâtiments de l'Etat. Il faut ou renoncer à ces relations, ou les admettre avec les conditions indispensables pour maintenir à chaque Etat souverain son indépendance.

"L'Etat propriétaire du port ou de la rade peut sans doute, à l'égard des bâtiments de guerre pour lesquels il aurait des motifs de sortir des règles ordinaires et pacifiques du droit des gens, leur interdire l'entrée de ses eaux; les y surveiller s'il croit leur présence dangereuse, ou leur enjoindre d'en sortir, de même qu'il est libre, quand ils sont dans la mer territoriale, d'employer à leur égard les moyens de sûreté que leur voisinage peut rendre nécessaires; sauf à répondre, envers l'Etat auquel ces vaisseaux appartiennent, de toutes ces mesures qui pourront être, suivant les événements qui les auront motivées ou la manière dont elles auront été exécutées, des actes de défense ou de précaution légitime, ou des actes de méfiance, ou des offenses graves, ou même des causes de guerre; mais tant qu'il les reçoit, il doit respecter en eux la souveraineté étrangère dont ils sont une émanation; il ne peut avoir, par conséquent, la prétension de régir les personnes qui se trouvent et les faits qui se passent à leur bord, ni de faire sur ce bord acte de puissance et de souveraineté.

"C'est ainsi que le conflit se trouve sagement réglé, et que l'indépendance de chaque Etat souverain est maintenue.

"Les conséquences de cette pratique, que M. Pinheiro-Ferreira relève comme les plus dénuées de raison, savoir, celles relatives à l'asile que les malfaiteurs du pays trouveraient à bord, appartiennent à une matière qui reviendra plus loin, et dont nous traiterons en détail. Mais nous pouvons, dès-à-présent, faire observer que jamais le Commandant d'un navire de guerre n'appliquera le bénéfice de l'exterritorialité de son navire en faveur des malfaiteurs du pays, pas plus que l'Ambassadeur l'exterritorialité de son hôtel et de ses équipages; et que, dans le cas où certains criminels seraient parvenus à se réfugier à son bord, il existe des règles internationales relativement à leur expulsion du navire ou à leur extradition.

"En un mot, l'inviolabilité qui est due en tous lieux aux navires de guerre comme à une forteresse flottante de l'Etat qui les a armés, renfermant un corps organisé de la puissance publique de cet Etat, cette inviolabilité n'entraîne pas l'irresponsabilité des officiers qui commandent ces navires. Mais tous les actes qui s'y réfèrent, soit de la part de l'Etat dans les eaux duquel sont mouillés les navires à l'égard de ces navires, soit réciproquement, tous ces actes sont actes de relations internationales, et les conséquences ou réparations, s'il y a lieu, doivent en être poursuivies par voie diplomatique.

"Cette inviolabilité ne diminue en rien, du reste, le droit qu'a toute nation, si le navire de guerre vient à commettre contre elle des actes d'agression, d'hostilité, ou de violence quelconques, de prendre immédiatement toutes les mesures et d'employer tous les moyens nécessaires à une légitime défense.

"Elle n'empêche pas non plus que les navires de guerre soient soumis à l'observation des règlements sanitaires du pays où ils veulent aborder. Les épreuves imposées par ces règlements sont des conditions mises à l'admission des navires dans les eaux de ce pays; elles ne sont nullement en contradiction avec le droit d'exterritorialité dont jouissent les bâtiments de guerre entrés dans ces eaux.

"Il résulte de tout ce qui précède que, loin de désapprouver, au point de vue de la pure raison, la coutume du droit international positif à l'égard des navires de guerre, il faut tenir cette coutume pour bonne et pour digne d'être maintenue en théorie comme en pratique."*

The principle laid down in the preceding extract is clear, and the consequences which flow from it are equally clear. A vessel commissioned as a public ship of war, entering a foreign port, is a portion of the naval force of the Government by which she is commissioned, commanded by its officers, and displaying the ensigns of its authority. Any act of force directed against her (unless to prevent or repel aggression, or compel her to depart after having been required to do so by competent authority) would be directed against her Government, and would at the same time, if done without previous warning, be an infraction of a recognized understanding, on the faith of which she entered, and on the observance of which she had a right to rely. If, while in neutral waters, she commits any violation of neutrality or other offence against the neutral, force may undoubtedly be employed in any way which may be necessary in order to prevent or arrest the unlawful act and to compel her departure. But redress ought not to be sought against the ship herself: it should be sought, if needful, against her Government. *A fortiori*, this is true if the offence were committed before she arrived at the neutral port. Thus, of the violations of neutrality committed during the war the grossest and most flagrant by far was that

* *Règles Internationales et Diplomatie de la Mer* (4th edition), vol. i, p. 190.

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perpetrated by the Wachusett in the harbour of Bahia. The Brazilian authorities would have been amply justified in firing on that vessel whilst engaged in the act, and sinking her if necessary; if she had afterwards presented herself in a Brazilian port, they would doubtless have refused her admission; but they would have rightly abstained, even on such provocation, from seizing and detaining her. *A multo fortiori* the same proposition holds good if the act complained of were done before the offending ship came into the possession of the commissioning Government, or before she was incorporated into its naval service.

These principles are recognized by publicists and sanctioned by usage. There is not a maritime Power in the world which would not resent any violation of them; and it would be the duty of any naval officer to resist such a violation, unless it were supported by manifestly superior force. They do not extend to prizes brought into neutral ports by the belligerent vessel, if captured within the waters of the neutral, or by a vessel unlawfully armed within her jurisdiction and during the cruize immediately following such armament. These the neutral may restore, and it may be his duty to do so, on the application of the original owners or their Government.

As to the nature of the proof which may be required that a vessel claiming the character of a public ship of war is really such, M. Ortolan observes:—

"Les preuves de la nationalité et du caractère d'un bâtiment de guerre sont dans le pavillon et dans la flamme qu'il fait battre à sa corne et au haut de ses mâts; dans l'attestation de son commandant donnée au besoin sur sa parole d'honneur; dans la commission de ce commandant, et dans les ordres qu'il a reçus de son souverain.

"Le pavillon et la flamme sont indices visibles; mais, dans certains cas, on n'est tenu d'y ajouter foi que lorsqu'ils ont été appuyés d'un coup de canon. L'attestation du commandant peut être exigible; les autres preuves doivent se présumer, et, soit en pleine mer, soit ailleurs, aucune puissance étrangère n'a le droit d'en obtenir l'exhibition."

He refers also to the answer returned by the Government of the Netherlands to that of the United States respecting the reception of the Sumter at Curaçoa, and to the opinion pronounced in 1782 by the Government of Russia in the matter of the Danish corvette St. John, seized in Spanish waters, notwithstanding the display of her pendant and the declaration of her commanding officer:—

"La Russie fut plus explicite. Elle jugea dans sa réponse:—

"'1. Qu'il est conforme aux principes du droit des gens qu'un bâtiment autorisé, selon les usages de la cour ou de la nation à laquelle il appartient, à porter pavillon militaire, doit être envisagé dès lors comme un bâtiment armé en guerre.

"'2. Que ni la forme de ce bâtiment, ni sa destination antérieure, ni le nombre d'individus qui en composent l'équipage, ne peuvent plus altérer en lui cette qualité inhérente, pourvu que l'officier commandant soit de marine militaire.'

"Il n'existe, que nous sachions, aucun Traité ni aucun acte public dans lesquels ce principe proclamé par la Russie ait été sanctionné depuis; mais il l'est incontestablement par la coutume générale."*

The established practice of maritime nations, including the United States and Great Britain, accords with the foregoing statements of Ortolan.†

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* *Règles Internationales et Diplomatie de la Mer* (4th edition), vol. i, pp. 181, 185.

† The general immunity of public ships of war from any foreign jurisdiction, civil or criminal, is thus stated in a work of acknowledged authority (Kent's *Commentaries on American Law*, vol. i, p. 155):—"This right of search is confined to private merchant vessels, and does not apply to public ships of war. Their immunity from the exercise of any civil or criminal jurisdiction but that of the Sovereign Power to which they belong, is uniformly asserted, claimed, and conceded. A contrary doctrine is not to be found in any jurist or writer on the law of nations, or admitted in any Treaty, and every act to the contrary has been promptly met and condemned." So Wheaton, *Elements of International Law*, p. 151, ed. 1836:—"If there be no express prohibition, the ports of a friendly State are considered as open to the public armed and commissioned ships belonging to another nation with whom that State is at peace. Such ships are exempt from the jurisdiction of the local tribunals and authorities, whether they enter the ports under the license implied from the absence of any prohibition, or under an express permission stipulated by treaty." The principle of the rule was laid down by Chief Justice Marshall, delivering the judgment of the Supreme Court of the United States, in the case of the "Exchange," a vessel belonging to an American citizen, which had been seized in a Spanish port by the French Government, and converted into a public ship of war, and which her original owner afterwards attempted to reclaim on her arrival at Philadelphia. After observing that private persons entering a foreign country are not exempt from the local jurisdiction, the Chief Justice proceeded—"But the situation of a public ship is in many respects different. She constitutes a part of the military force of her nation, acts under the immediate and direct command of her Sovereign, is employed by him in national objects. He has many and powerful motives for preventing those objects from being defeated by the interference of a foreign State. Such interference cannot take place without seriously affecting his power and dignity. The implied license, therefore, under which such vessel enters a friendly port may reasonably be

Argument of the United States. What is "Due Diligence?"

Agument of the United States on neutral duties.

Passing from the question, what classes of acts a neutral Power is bound to use due diligence to prevent, to the further question, what is due diligence, Her Majesty's Government finds that "these words are not regarded by the United States as changing in any respect the obligations of a neutral regarding the matters referred to in the Rules, as those obligations were imposed by the principles of international law existing before the conclusion of the Treaty."* Her Majesty's Government concurs with that of the United States in holding that the words "due diligence" introduce no new or additional obligation. They exact from the neutral, in the discharge of the duties imposed on him, that measure of care, and no other, which is required by the ordinary principles of international jurisprudence, and the absence of which constitutes negligence.

What is due diligence?

Case of the United States, p. 40.

Her Majesty's Government will not follow the Government of the United States through the observations which it has presented to the Arbitrators on the nature and degrees of negligence, but will notice only the definition which, at the close of those observations, it has attempted to supply.

"The United States understand that the diligence which is called for by the Rules of the Treaty of Washington is a due diligence; that is, a diligence proportioned to the magnitude of the subject and to the dignity and strength of the Power which is to exercise it:—a diligence which shall, by the use of active vigilance, and of all the other means in the power of the neutral, through all stages of the transaction, prevent its soil from being violated:—a diligence that shall in like manner deter designing men from committing acts of war upon the soil of the neutral against its will, and thus possibly dragging it into a war which it would avoid:—a diligence which prompts the neutral to the most energetic measures to discover any purpose of doing the acts forbidden by its good faith as a neutral, and imposes upon it the obligation, when it receives the knowledge of an intention to commit such acts, to use all the means in its power to prevent it."†

Ibid., p. 43.

Her Majesty's Government has been unable to collect from this definition the information which it is doubtless intended to convey. It may readily be conceded that the care exerted by a Government to prevent violations of its neutrality should bear some proportion to the probable consequences of such offences. It may be conceded also that the responsibility incurred by failing to prevent an offence must materially depend on the power which the Government possessed of preventing it. So far as this, the British Government concurs with the Government of the United States. But Her Majesty's Government cannot admit that the measure of diligence due from neutral Powers ought to be proportioned in any way to their relative degrees of dignity; it knows of no distinction between more dignified and less dignified Powers; it regards all sovereign States as enjoying equal rights and equally subject to all ordinary international obligations; and it is firmly persuaded that there is no State in Europe or America which would be willing to claim or accept any immunity in this respect on the ground of its inferiority to others in extent, military force, or population. In truth, the Arbitrators will have clearly perceived, from the statement already presented to them on the part of Great Britain, that in a country which, with free institutions, possesses a large commercial marine and a very extensive ship-building trade, the difficulty of preventing enterprises of this nature is, instead of being less, far greater than in countries which are not so populous and where these conditions are not united; and just allowance ought to be made for this difficulty. The assertion that due diligence means a diligence which shall prevent the acts in question and shall deter men from committing them, if taken literally, can only signify that no Government can be held to have done its duty which has not been completely successful. Of all the Powers in the world, such a test would most severely condemn the Government of the United States. If not taken literally, it can contribute nothing to a serious discussion. It has been shown, by ample evidence, in the Case presented on the part of Great Britain, that the measures adopted by the British Government did prevent and deter men from enterprizes which would have violated or imperilled her neutrality; all that the United States have to complain of is, that these measures proved ineffectual to prevent or deter in a very small number of cases, in which the agents contrived to escape observation,

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construed, and it seems to the Court ought to be construed, as containing an exemption from the jurisdiction of the Sovereign within whose territory she claims the rites of hospitality." (Cranch's Reports, vol. vii, p. 135.) The rule was also affirmed by Mr. Justice Story, one of the greatest jurists who ever adorned the United States, in the case of the Santissima Trinidad. It is assumed in Mr. Cushing's opinion referred to above (p. 16) in the case of the Sitka.

* Case of the United States, p. 150,

† Ibid., p. 158.

What is due diligence?

or the difficulty of obtaining evidence was great. That due diligence requires a Government to use all the means in its power, is a proposition true in one sense, false in another: true, if it means that the Government is bound to exert honestly and with reasonable care and activity the means at its disposal; false, impracticable, and absurd, if it means that a liability arises whenever it is possible to show that an hour has been lost which might have been gained, or an accidental delay incurred which might, by the utmost foresight, have been prevented; that an expedient which might have succeeded has not been tried; that means of obtaining information which are deemed unworthy or improper have not been resorted to; or that the exertions of an officer or servant of Government have not been taxed to the utmost limit of his physical capacity.

Nor can we fail to observe that, in proportion as we extend the duty of prevention incumbent on neutral Governments, from hostile enterprises which are open and flagrant to acts of a more doubtful character which border on the line betwixt the lawful and the unlawful, it becomes more and more difficult to exact from the neutral, in the performance of that duty, peculiar and extraordinary vigilance and activity. The duty of preventing the open assembling within neutral territory of an armed hostile expedition against a neighbouring country is plain and obvious, and requires only a prompt exercise of adequate force. But it is otherwise when we come to acts of a different class, the criminality of which depends on a latent intention; such, for example, as the mere procuring for belligerent purposes from the yards of a neutral shipbuilder, whose ordinary business it is to build ships of all kinds for customers of all nations, a vessel with some special adaptation for war. There is nothing in the relation of a neutral to a belligerent to cast on the former the duty of exercising within his own territory a constant and minute espionage over ordinary transactions of commerce for the protection of the latter. This relation, always onerous to the neutral, is at the same time, it must be remembered, purely involuntary on his part. It is forced on him by the quarrels of his neighbours in which he has no concern, or by their internal discords when those discords break out into civil war,

Her Majesty's Government has not attempted a task which has baffled, as it believes, the ingenuity of jurists of all times and countries—that of defining with any approach to precision, apart from the circumstances of any particular case, what shall be deemed due diligence or reasonable care. In its Case already presented to the Tribunal, it has stated some general propositions, which it believes to be consonant with justice and supported by such analogies as may be fairly drawn from the private law of Europe and America.* It leaves it, however, to the Arbitrators, who know what are the ordinary powers of Governments, what the difficulties they labour under, and what may reasonably and wisely be expected from them, to determine, upon a careful consideration of the facts, and on the same principles by which the States, to which they themselves belong, would be willing to be judged, whether on the part of Great Britain there has or has not been that want of due care or diligence which makes reparation a duty.†

On the question, in what cases and within what limits compensation in money may reasonably be deemed due from a neutral nation for injuries occasioned by such a want of care, Her Majesty's Government will here only say, that the position of Great Britain appears to be misapprehended by the United States, and that the two decisions of an American Court cited in the Case have no bearing upon it.‡ Such a question, it is evident, is not within the cognizance of any municipal Tribunal, however respectable; and no municipal Tribunal has attempted to pronounce judgment on it. The Supreme Court of the United States, in the cases cited, decided only that of two armed vessels one had been unlawfully fitted out, whilst the other had received an unlawful augmentation of force, within the jurisdiction of the United States, and that prizes taken by each and brought within the jurisdiction of the United States ought to be restored.

Case of the United States, pp. 55, 56.

The Arbitrators will now be in a situation to judge what value to attribute to the assertion, "that the principles for which the United States contend have been recognized by the statesmen, the jurists, the publicists, and the legislators of Great Britain; that they have the approbation of the most eminent authorities upon the Continent of Europe; and that they have been regarded by the other Powers of Europe in their dealing with each other."§ The truth is, that the alleged principles from which Her Majesty's Govern-

Ibid., p. 54.

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* Case of Great Britain, p. 24, propositions 9, 10, 11; and pp. 166, 167.

† "Du reste," says a distinguished French jurist, treating of this subject in connection with private law, "du reste, soit qu'il s'agisse d'une obligation de donner ou de faire, la prestation des fautes est, dans la pratique, à peine une question de droit. Le point de fait y est toujours dominant, quand il n'y est pas tout."—Larombière, *Théorie et Pratique des Obligations*, vol. i, p. 417.

‡ The Santissima Trinidad and the Gran Para. Case of the United States, p. 206.

§ Case of the United States, p. 202.

ment has declared its dissent were never before seriously asserted, and never admitted or recognized by any Power in Europe or America; that they have the support of no publicist of authority; that they are unknown in Great Britain; and were, up to the time when these claims were brought forward, equally unknown in the United States.*

* The following extract from Reddie's "Researches in Maritime and International Law," (vol. ii, p. 210), is apposite to the general question how far neutral Governments are bound to interfere actively for the purpose of restraining their subjects from acts falling within the prohibitions of international law. It is an abstract of the views expressed in the "Considérations sur les Droits Réciproques des Puissances Belligérantes et des Puissances Neutres sur Mer," of Tetens, a work which Mr. Reddie describes as "the most free from national bias, and most impartial exposition of the general principles of maritime international law which has appeared in recent times:"—

"It is a wise foresight for neutral Governments to obviate, during war, as far as possible, all illegal conduct on the part of their subjects, for the double advantage of preserving them from risks, and of preventing the suspicions of belligerents against the traders, who sail under neutral flags. The conduct exhibited by several individuals in a neutral nation, produces naturally a presumption for or against their fellow-countrymen; which seldom fails to have consequences favourable or unfavourable to the vessels of that nation which the belligerents encounter. There is also a political reason for neutral Governments watching their subjects in this respect. They cannot, indeed, manifest more authentically their perfect neutrality than by clear and precise ordinances for their commerce and navigation during war, and by a rigorous police, severely directed against those who contravene them. The more they exert themselves to restrain fraud, the more they are in a state to protect their loyal subjects, and to interpose with success in the cases of just claims made by the latter against the cruizers of the belligerent Powers.

"What neutrals, however, may do in this respect does not arise from any right which imposes on them the obligation of maintaining a more special surveillance over their subjects during war than they are in the habit of doing during peace; nor to exercise a more extensive inspection over the legality of their conduct towards belligerents than that which is prescribed by law. In even allowing them to act entirely as they choose, they in no manner infringe the rights of the belligerents, provided they do not pretend otherwise to protect their contraventions. But such indifference may inspire belligerents with unfavourable opinions, which it may be as well to prevent, especially if it be preponderating Powers who are at war.

"From neutral Governments not being under an obligation to obviate the abuses of their subjects, it follows that belligerents, whatever condescension they may have to expect from them for that purpose, cannot reasonably require them to extend their measures beyond what is in practice in these same neutral countries for preventing frauds being committed on their own Customs, and for checking the other deceitful contrivances for evading payment of the revenues of the State. The maximum of precaution, in this case, is to maintain and enforce the observance of neutrality in vessels and cargoes with the same diligence and exactness as are exercised in inquiries and other proceedings relative to taxes, or imposts and Customs. He who does as much to prevent a wrong meditated against another as he does for his own protection, satisfies every just and reasonable expectation on the part of that other. Perhaps, however, more might be done, if it were wished, completely to attain the object. In time of war special instructions might be ordered; tribunals of inquiry might be established against the frauds of merchants and shipowners, and more rigour might be shown in the punishment of their delinquences. But this cannot be demanded on the one side; and, on the other, it might be difficult to grant it, because there might result from it consequences inconsistent with the general spirit of the prohibitory laws of the State. At least, this care must be left to the neutral Governments, to whom alone it belongs to judge what it may be proper for them to do with reference to the circumstances of the war."

Part III.

Precedents appealed to by the United States.

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IN aid of its view of neutral duties and liabilities, the Government of the United States has appealed to several precedents recorded in history. These are—

1. A correspondence which passed between the Governments of Spain and Sweden, in 1825, relative to a sale of certain Swedish vessels of war, which the Spanish Government suspected of having been bought for the service of Mexico.

2. The correspondence between the British Minister and the Government of the United States, in 1793, respecting the depredations practised on British commerce by privateers under the French flag, fitted out in American ports; the measures adopted in consequence by the Government of the United States; and the Treaty of 19th November, 1794.

3. The complaints and claims urged by Spain and Portugal against the United States, on account of like depredations on the subjects and shipping of those two Powers by privateers fitted out within the United States; and the subsequent Treaty with Spain of 22nd February, 1819.

Some of these transactions have been so insufficiently presented in the Case of the United States that it becomes necessary to recall them, so far as may be necessary to set the facts in their true light. It will then be seen that, far from lending any support to the claims of the United States, they, on the contrary, militate against those claims.

It will be necessary also, since the Government of the United States has invoked against Great Britain the history of American neutrality, to make some additions to a narrative which would otherwise be very imperfect.

1. *Case of the Swedish Ships.**

1. Case of the Swedish ships, 1825.

This affair calls for scarcely any remark on the part of Great Britain. It was a sale, by a neutral Government, of a ship of the line and two frigates; and there was reason to suspect that the trading firm who had become the nominal purchasers had bought them for the service of the Republic of Mexico, then at war with Spain. The contract of sale contained a clause, enabling either party to rescind it on payment of a stipulated sum. The transaction was uncompleted, and still within the power of the Swedish Government. The Government of Spain remonstrated warmly, and induced the Ministers of other Powers resident at the Swedish Court to support its representations. The Government of Sweden insisted on its right to complete the sale. At the end of four months, after much correspondence, the contract was rescinded on the request of the purchasers, who alleged that the vessels had been detained till too late in the year by reason of the recall of certain officers and seamen of the Swedish Navy, who had previously obtained leave to enter the merchant service and were to be employed on board of them. The stipulated payment was excused; and the Swedish Government undertook to reimburse the purchasers for money laid out on the repair and equipment of the ships.

That the Government of Sweden was right in not completing the sale, after circumstances of suspicion had been brought to its knowledge by Spain, there can be no doubt. It has always been conceded, that a sale by a neutral Government to a belligerent, directly or indirectly, of arms or munitions of war, or ships of war, stands on ground quite different from the mere forbearance or omission to prohibit such transactions on the part of private individuals who are its subjects. In the latter case no duty is violated. But a Government which sells or furnishes arms, gives or lends money, to a belligerent, becomes to that extent a participant in the war.†

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* The narrative introduced into the Case of the United States is taken from Cussy's *Phases et Causes Célèbres du Droit Maritime*, vol. ii, p. 402. There is a better account, containing the official correspondence (which is wanting in Cussy) in Martens's *Causes Célèbres du Droit des Gens*, vol. v, p. 229 (Ed. 1861).

† See Heffter, cited below p. 145. This distinction is recognized by all writers. There is reason to believe, however, from facts which have become notorious, that it was overlooked by the American Government during the late war between France and Germany.

Precedents appealed to by the United States.

Case of the Swedish Ships, 1825.

In the case of the Anglo-Chinese Flotilla, which has been already stated to the Arbitrators, it will have been seen that, under somewhat similar circumstances, Her Britannic Majesty's Government did not hesitate to do far more than the Government of Sweden. The differences are, that the vessels of the flotilla had not been the property of the British Government, and had only been officered and manned by its permission; that no circumstances of suspicion had been suggested to the Government, but merely an apprehended possibility; that Great Britain acted immediately, without any correspondence or delay; and that the sacrifice she undertook to make, amounted, not, as in the Swedish case, to about 60,000 francs, but to above 2,500,000.*

Great Britain has certainly nothing to fear from this comparison.

The purchase by Her Majesty's Government, at the price of 220,000*l.*, of the two iron-clads seized in 1863, has been mentioned in the British Case; and it has been stated (as the fact is) that in agreeing to this purchase the Government was mainly actuated by anxiety to prevent, by any means in its power, however costly, vessels of so formidable a character, constructed in a British port, from passing, directly or indirectly, into the hands of a belligerent.†

The case of the old despatch-boat Victor, sold out of Her Majesty's navy in 1863, will be hereafter referred to.‡ There were in that case no circumstances to excite suspicion, and no representation was made by the Minister of the United States to Her Majesty's Government. When it was discovered, however, that this vessel had passed into the hands of a belligerent, and that endeavours had been made to fit her out as a cruizer, orders were immediately given that no more ships should be sold out of the navy during the continuance of the war. This decision was followed in the case of two vessels (the Reynard and Alacrity), for which an advantageous offer was made to the Admiralty in December 1863, and which it was desirable to dispose of. "It would be better," Earl Russell wrote, "at the present time, not to sell any vessels to private firms, as it is impossible to obtain any sufficient assurance in regard to what might be done with vessels when sold out of the navy."§

2. *Violations of American Neutrality in* 1793 *and* 1794.

2. Violations of American neutrality in 1793 and 1794.

In the year 1793 the neutrality of the United States was infringed, not only by captures, within their territorial waters, of British vessels by hostile armed ships, but by repeated and successful attempts to fit out privateers for cruizing under the French flag against Great Britain, then at peace with the United States and at war with France.

It must be here observed that the example of this mode of carrying on maritime war had been set by the United States themselves. The agents who were sent to France in 1776 for the purpose of gaining for the United Colonies the aid and support of that Power in their struggle for independence, succeeded in procuring and arming many privateers, which they dispatched from French ports with orders to cruize against Great Britain, and from which British commerce suffered severely.

It was natural to expect that when, in February 1793, the French Republic declared war against Great Britain, France in her turn should try to imitate and profit by that example. On the 8th April, 1793, a French envoy arrived at Charleston; he immediately proceeded to fit out privateers, and four were fitted out, armed, manned, and commissioned within American jurisdiction before the end of the month. These acts were open and undisguised. Houses of rendezvous were opened at Charleston for collecting crews, the vessels were suffered to pass the fort under a written permission from the Governor of South Carolina, and there was reasonable ground to believe that, though nominally owned by Frenchmen, they were really the property of American citizens. These vessels afterwards brought in prizes, which were condemned by pretended prize courts held within the jurisdiction of the United States.

Applying to the United States the stringent rule which that Power now seeks to apply to Great Britain, the British Government might undoubtedly have insisted that these were violations of neutrality which the American Government was bound to prevent, that no imperfections in its municipal law or executive organization could be pleaded in its defence, and that the United States were liable for all the injuries which the failure to prevent them might occasion to Great Britain.

The British Minister, however, limited himself to the request that the American Government would "pursue such measures as to its wisdom may appear the best calculated for repressing such practices in future, and for restoring to their rightful owners *any captures which these particular privateers may attempt to bring into the ports of the United States.*"‖

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* Case of Great Britain, p. 47. † Ibid., p. 44. ‡ Infra, p. 122.
§ Appendix to British Case, vol. v, p. 201. ‖ Ibid., p. 241.

Part III.

Precedents appealed to by the United States.

Violations of American neutrality, 1793–94.

In the month of May one of the privateers unlawfully fitted out at Charleston (the Citoyen Genêt) came into the port of Philadelphia, which was the seat of the Government of the United States, bringing a prize. The Citoyen Genêt was not seized or detained by the Government of the United States.

After some correspondence with the French Envoy, Mr. Jefferson, then Secretary of State, informed him on the 5th June, 1793, that, in the opinion of the President, "the arming and equipping vessels in the ports of the United States to cruise against nations with which they were at peace was incompatible with the territorial sovereignty of the United States; that it made them instrumental to the annoyance of those nations, and thereby tended to compromise their peace; and that he thought it necessary, as an evidence of good faith to them, as well as a proper reparation to the sovereignty of the country, that the armed vessels of this description should"—not be detained in, but—"depart from the ports of the United States."*

The British Minister was, on the same day, informed that, "the moment it was known, the most energetic orders were sent to every State and port in the Union to prevent a repetition of the accident," and that persons accused of being participators in the act had been committed for trial. The restitution of the prizes was refused:—

"The principal agents in this transaction were French citizens. Being within the United States at the moment a war broke out between their own and another country, they determined to go into its defence; they purchase, arm, and equip a vessel with their own money, man it themselves, receive a regular commission from their nation, depart out of the United States, and then commence hostilities by capturing a vessel. If under these circumstances the commission of the captors was valid, the property, according to the laws of war, was by the capture transferred to them, and it would be an aggression on their nation for the United States to rescue it from them, whether on the high seas or on coming into their ports. If the commission was not valid, and consequently the property not transferred by the laws of war to the captors, then the case would have been cognizable in our Courts of Admiralty, and the owners might have gone thither for redress. So that on neither supposition would the Executive be justifiable in interposing."†

The American Government thus refused to take any measures even for the restitution of prizes actually brought into their ports by privateers equipped and commissioned therein. The acts complained of, it was added, could not be imputed to the Government, which could not have known, and therefore could not have prevented them.

The British Minister, in reply (7th June, 1793), represented that these acts were notorious and unconcealed, and well known to the local authorities. He expressed his concern at the decision at which the Government had arrived, and added—

"For all these reasons, notwithstanding the deference which he shall ever preserve for the sentiments of this Government, the Undersigned conceives himself justified in having entertained a confidence that the Government of the United States would not only have repressed this insult offered to its sovereignty, but also that the aggression on the subjects of the Crown of Great Britain would have been repaired by the restitution of vessels thus captured."‡

At the date of Mr. Jefferson's letter, and for a considerable time afterwards, it was a disputed question whether the Courts of the United States had jurisdiction to inquire into captures made under the circumstances above mentioned, or to order restitution; and this question remained unsettled until the jurisdiction was affirmed by a judgment of the Supreme Court, delivered on the 18th February, 1794. Owners of vessels unlawfully captured were, in the meantime, debarred from any redress, and to refuse restitution unless through the medium of the Courts was to refuse it altogether.

After this date a vessel was fitted out and armed as a French privateer in the port of Philadelphia itself, under the name of the Little Democrat. The Government did not seize or detain her; it relied on an expectation that the French Envoy would not permit her to sail. She sailed, however, and engaged in depredations on British commerce.

On the 4th August, 1793, Circular Instructions were sent to the Collectors of Customs within the United States, intended, though not exclusively intended, to provide against violations of neutrality. According to these instructions, vessels originally fitted out by either belligerent in ports of the United States were not thenceforth to have asylum in any district of the United States. Any vessel contravening the rules laid down was to be refused a clearance, until she should have complied with what the Governor of the State might decide in reference to her. Care, however, was to be taken, in this, not unnecessarily or unreasonably to embarrass trade, or vex any of the parties concerned. In order to guard against contraventions, the condition as to military equipment of every vessel arriving in a port of the United States was to be ascertained by accurate survey made on her arrival, and again before her departure; but no attempt was to be made to inspect "any

* Report of the Neutrality Laws Commissioners, p. 19: Appendix to British Case, vol. iii.
† Appendix to British Case, vol. v, p. 242. ‡ Ibid., p. 244.

vessel of war in the immediate service of the Government of a foreign nation." A schedule of rules was appended to these instructions; and it is material to observe what these rules permitted, and what they prohibited in the ports of the United States, disregarding only some specific limitations, which had reference to Treaties then existing between the United States and France. They permitted—

1. Equipments of merchant-vessels by either belligerent, "purely for the accommodation of them as such."

2. Equipments of vessels of war in the immediate service of the Government of either belligerent, which, if done to other vessels, would be of a doubtful nature, as applicable either to commerce or war.

3. Equipments of a like nature done to vessels fitted for merchandize and war, whether with or without commissions.

4. They permitted also armed vessels of either belligerent, which should not have infringed any of its rules, to "engage or enlist their own subjects or citizens, not being inhabitants of the United States."

They prohibited "equipments of vessels in the ports of the United States which are of a nature solely adapted for war."*

Any kind of equipment, therefore, which might be applicable either to war or to commerce was declared lawful, whether done to a vessel fitted for war and commerce, or to a vessel actually commissioned as a public ship of war. The only question was as to the nature of the equipment. If it was of such a character as to be applicable solely and exclusively to war, it was forbidden; if not, it was not forbidden.

These rules have always been referred to with approval and respect by American writers on international law.

Notwithstanding the instructions, privateers continued to be fitted out in American ports, and privateers which had been previously fitted out appear to have been suffered to enter, refit, and depart unmolested. Thus, on the 29th December, 1793, the British Minister, Mr. Hammond, wrote to Mr. Jefferson:—

"The danger to be apprehended from these last-mentioned vessels" (privateers illegally fitted out in ports of the United States), "still continues to exist to a very alarming degree; since, notwithstanding the repeated assurances I have received from the Federal Government of its determination to exclude those privateers from any future asylum in its ports, and the sincerity of its desire to enforce this determination, I have reason to infer that, in other quarters, means have been successfully devised either to elude its vigilance, or to render nugatory its injunctions. This inference arises from the information I have received—that the privateer Le Citoyen Genêt, fitted out at Charleston, was on the 21st of August, permitted to return to the port of Philadelphia for the second time, to remain there some days, and then to proceed to sea for the purpose of commencing new depredations, which, as it appears from the public prints, she is now prosecuting in the adjacent seas — that Le Petit Democrat, and La Carmagnole, both fitted out in the Delaware, were permitted to enter the port of New York, and to continue therein unmolested during a great part of the months of August, September, and October last—that the latter vessel is still in that port, and that the former, having sailed from thence in company with the French fleet under the charge of Admiral Sercy, and having separated from it at sea, proceeded first to Boston, and afterwards returned for a second time to New York, wherein she at present remains."†

On the 5th November, 1794, he wrote to Lord Grenville:—

"In conformity to the intention expressed in my despatch No. 31, I have now the honour of transmitting to your Lordship a list, compiled from returns sent to me by His Majesty's Consuls, of such British vessels as have been brought as prizes into ports of the United States, since the commencement of the present hostilities to the beginning of the month of August. On this list it is proper for me to remark, that the value of a considerable proportion of the British vessels captured, and of their cargoes, is omitted in the Consular Returns; that of those of which the value is mentioned, though it be much under-rated, the amount is 195,548*l.* sterling; and that of seventy-five British prizes forty-six were made by privateers fitted out in ports of the United States.

"The depredations of these last-mentioned vessels, which seemed to have been in some measure suspended by the appearance of a British naval force in these seas, have, by recent accounts from Charleston, recommenced. I likewise learn from Baltimore that several vessels are now arming in that port, for the purpose of proceeding to Port de Paix in St. Domingo, or to Guadaloupe, and of there procuring French commissions. Though, by an Act passed in the last Session of Congress, this be a punishable offence, the difficulty of obtaining legal proof of the intention of the persons arming such vessels is a sufficient objection to the institution of any judicial proceedings thereon; and it is useless to address any complaints upon subjects of this nature to the general Government, since the investigation of them is commonly committed to the Governors of the respective States, of whom a great majority is so hostile to Great Britain as readily to connive at measures, the execution of which may be injurious to her interests."‡

The British Vice-Consul at Charleston wrote as follows, on the 28th November, 1794, to the Consul (who was then absent on leave):—

* Appendix to British Case, vol. v, pp. 269, 270. † Ibid., p. 268. ‡ Ibid., p. 296.

Part III.

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Precedents appealed to by the United States.

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"Notwithstanding the laws of the United States are so guarded against any breach of neutrality, the French here evade them, and arm as many privateers as ever. Yesterday I acquainted the Collector of the Federal Customs in this port, who is directed by the Secretary of the Treasury to inspect all vessels in this place, and see that none of them in any way whatever commit a breach of the laws:—

"That the brig Cygnet, fitted for war in this harbour, but afterwards permitted to clear out as a merchantman, having been disarmed and her ports nailed up, had her guns sent after her in the privateer L'Ami de la Pointe à Petre, took them on board off this Bar, mounted them, knocked out her ports, and proceeded to sea, fully equipped as a privateer.

"That the schooner St. Joseph Sugna cleared for Port au Paix as a Spanish prize, had no guns mounted when she dropped down to the Fort, nor any appearance in her hull of having been fitted for war, although her rigging had every apparent mark of the privateer—had previously to her going over the Bar her quarter deck off, port holes cut, and guns mounted.

"That there was a brigantine fitting at Gaillard's Wharf, which came in from Port au Paix, pierced for twelve guns, with a high quarter-deck, the bulk-head of which was cut away and beams laid level with the main deck, which, from every appearance, is meant to proceed in the same manner the above schooner did—by cutting away the old quarter-deck after she drops down, and getting her guns sent after her.

"That a new prize schooner, called the Swallow, was fitting in same manner, and a Providence sloop, with many vessels of a larger size, among which is the old Delaware frigate that was sold after the peace, and fitted for a South Sea whaler. Also, a sloop lying on the stream, with a large quantity of gunpowder on board, supposed to be for the purpose of supplying the privateers."*

The Cygnet cleared for Port au Paix with a trifling cargo, there got a commission, and on her return made several prizes, which she sent into Charleston, and of which the local Court refused to decree restitution.

The despatches of the British Consuls at Charleston and elsewhere in 1794, 1795, and some subsequent years, repeatedly refer to privateers fitting out or increasing their armament in ports of the United States, the difficulty of obtaining evidence against them, and the absence of effectual means of repression. Thus the Consul at New York, on the 30th November, 1795, after a complaint of a privateer (the Coquette) fitted out in New York, which had taken four prizes, writes—

"When such vessels are fitted out in America in a secret manner, it is difficult to procure proof against them, and I apprehend the law prohibiting the practice is not adequate to the purpose, nor is it enforced with sufficient activity."†

And, on the 27th April, 1796, the Vice-Consul at Charleston wrote—

"Inclosed you will, however, receive the state of them (the proceedings in Prize Causes before the Supreme Court), as handed me by His Majesty's Chargé d'Affaires in Philadelphia, from which it would appear nothing but the ownership being in American citizens will cause a restoration of prizes, and that the law of the 5th June, 1794, passed in Congress, as well as the general law of nations, so far as respects the arming, equipping, augmenting, or altering the ships of war or privateers of any Power at war in neutral ports, are entirely set aside in the Courts of this country. Indeed, Mr. Chase, one of the Federal Judges, gave it as his opinion that the citizens of the United States had a right to build and equip ships of war as an article of trade, and to dispose of them to either of the belligerent Powers without any breach of their neutrality, provided none of those were in any manner concerned in them after they became cruisers."‡

It has thus been seen that privateers were fitted out, armed, and commissioned in American ports. These privateers committed considerable depredations on British shipping, and took many prizes. Let us now see what was done as to the restitution of the prizes, and compensation for the injuries thus sustained by Great Britain.

The final judgment of the American Government as to what was right to be done in this matter was conveyed in a letter which Mr. Jefferson addressed to the British Minister, dated 5th September, 1793. The substance of this letter was, that the Government recognized an obligation to restore prizes *actually brought into its ports* after the 5th June, 1793, if captured by privateers which had been unlawfully fitted out within its jurisdiction, or to use all the means in its power to do so. If, in any case, it had forborne or should forbear to do this, it would hold itself bound to make compensation to the owners.§ It recognized no other obligation. We shall presently see how this engagement was understood.

The promise or engagement contained in this letter was expressly confined to prizes brought in after the 5th June, 1793. The line of distinction thus drawn, though intelligible as between the United States and France, because this was the date of Mr. Jefferson's prohibitory letter to M. Genêt, was, so far as the rights of Great Britain were concerned, purely arbitrary, the prizes brought in before that date being as unlawful, according to the law of nations, as those brought in after it, and the right to restitution or compensation being

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* Appendix to British Case, vol. v, p. 284.

† Ibid., p. 292.

‡ Ibid., p. 294.

§ Ibid., p. 255.

precisely the same. The American Government, however, refused to make either restitution or compensation for prizes brought in previous to the time at which the resolution that they were to be treated as illegal was formed and made known to the French Envoy.

Precedents appealed to by the United States.

The British Minister as to this wrote as follows, on the 7th June, 1794, to the then Secretary of State, Mr. Randolph:—

Violations of American neutrality, 1793–94.

"From the same paper it is also evident, that I have never acquiesced in the propriety of the determination of this Government not to restore vessels captured previously to the 5th of June—as well for the reasons which I have there stated, as because I have never perfectly comprehended the principles which could legalize the prizes antecedently to that period, and invalidate those which were made subsequently to it. The list of those prizes annexed to the Memorial will evince that (whatever may have been conceived by some) their value was not inconsiderable; but even if their amount had been less considerable, the question in a national point of view could not have been affected by that circumstance."*

It may perhaps be supposed that the owners of these vessels, though they did not obtain restitution, would be awarded compensation under Article VII of the Treaty of 1794. But it will presently be seen that this was refused to them.

The cases in which the Government had "forborne" to make restitution were those of three British merchant-ships which had been captured by privateers unlawfully fitted out, and brought by the captors into American ports after the 5th June, 1793, but which the Government from motives of policy was unwilling to take forcibly out of the captors' hands. No provision having been made by Congress for the compensation promised in the case of these three vessels, the owners of these and of a fourth, which was admitted to stand on the same ground, had no other resource than to carry their claims before the Commissioners afterwards appointed, which they accordingly did.

Decisions of the Commissioners under the VIIth Article of the Treaty of 1794.

By the VIIth Article of the Treaty of 19th November, 1794, after a recital that certain British subjects complained "that, in the course of the war, they have sustained loss and damage by reason of the capture of their vessels and merchandize, taken within the limits and jurisdiction of the States and brought into the ports of the same, or taken by vessels originally armed in ports of the said States," it was agreed that, "in all such cases where restitution should not have been made agreeably to the tenor of the letter from M. Jefferson to Mr. Hammond, dated at Philadelphia, September 5th, 1793 (a copy of which was annexed to the Treaty)", the complaints should be referred to Commissioners, who were empowered to award compensation.

Various claims were made before the Commissioners so appointed. Three leading decisions pronounced by them will be found in the Appendix to this Counter-Case. By these decisions it was ruled—

1. That, according to the true construction of Article VII of the Treaty, coupled with Mr. Jefferson's letter, no claim could be made on account of a capture *made before the 5th June*, 1793. Hence compensation was refused in the case of a British vessel which had been captured on the 8th May by the Sans Culottes, a privateer fitted out at Charleston, and had been openly brought by her captors into the port of Philadelphia.†

2. That no compensation could be claimed for captures made by vessels illegally fitted out within the jurisdiction of the United States *unless the prizes had been subsequently brought into an American port.* The owners, therefore, of a vessel which the captors had destroyed at sea were entitled to no compensation.‡

3. That where the prize had been brought in, no compensation could be claimed if the claimant had not taken proceedings in a district Court of Admiralty, and proved his case there by sufficient testimony, or if there had been any negligence or any delay in instituting or carrying on such proceedings, or in enforcing a judgment if obtained.§

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* Appendix to British Case, vol. v, p. 276.

† "All the documents above quoted were of the date of 1793, the latest of them of November 22. They were all public, and in the hands of the negotiators of the present Treaty. That Treaty, which was signed in November 1794, makes the letter of September 1793 the standard of the engagements of the United States in cases of this nature, and directs us in all cases where restitution shall not have been made agreeably to the tenor of that letter to proceed as in the other cases committed to us. The tenor of that letter appears to me to respect only cases occurring after the 5th June, and contains no stipulation either of restitution or compensation in cases anterior to that date. The case of the Fanny, Pile, Master, now under consideration, is of anterior date, and therefore is, in my opinion, not within the powers or duty of this Board further to consider."—Decision in the case of the Fanny, Pile, Master. Appendix to British Case, vol. v, p. 319.

‡ Decision in the case of the Jamaica, Martin, Master. Ibid., pp. 311 *et seq.*

§ "From this examination of the letter, which is given to us for a rule, it results that it was the opinion of the President, therein expressed, that it was incumbent on the United States to make restitution of, or compensation for, all such vessels and property belonging to British subjects as should have been—first, captured between the

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Precedents appealed to by the United States.

Violations of American neutrality in 1793-94.

The real effect then of the engagement entered into by the Government of the United States as to restitution or compensation, appears to have been this. The owner of a vessel captured by a ship which had offended within American waters against the prohibitions of the United States' Government, was at liberty to obtain, if he could, by proceedings in a Court of Admiralty, a decree for restitution, and the Government undertook in that case either to use all the means in its power to enforce the decree should it be resisted, or else to indemnify him for the loss.* If he could not obtain a decree, he had no redress; if the means used by the Government proved ineffectual, he had likewise no redress.† He was equally without redress if his vessel had been plundered or destroyed at sea and not brought into an American port. If the capture was made before a certain date arbitrarily fixed, then, although the prize had been brought within the jurisdiction of the United States, the Government would do nothing to secure him either restitution or indemnity.

This is one of the two precedents on which the United States rely as establishing the proposition, "that when a neutral fails to use all the means in its power to prevent a breach of the neutrality of its soil or waters in any of the foregoing respects, the neutral should make compensation for the injury resulting therefrom,"‡ and as justifying the claims it now makes against Great Britain. What the other is, we shall see presently.

Case of the United States, p. 57.

Let us now observe the terms in which this transaction has been represented to the Arbitrators. "The Government of General Washington determined, however, as it had been informed of these attempts at violating the sovereignty of the nation, that it was the duty of the United States not only to repress them in future, but to restore prizes that might be captured by vessels thus illegally fitted out, manned, equipped, or commissioned within the waters of the United States, or, if unable to restore them, then to make compensation for them."§

Ibid., p. 35.

"From this examination it appears . . that the United States undertook to make compensation for the injuries resulting from violations that had taken place where they had failed to exert all the means in their power to prevent them. It was subsequently

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dates of June 5 and August 7 within the line of jurisdictional protection of the United States, or even on the high seas; if, secondly, such captured vessel and property were brought into the ports of the United States; and, thirdly, provided that, in cases of capture on the high seas, this responsibility should be limited to captures made by vessels armed within their ports; and, fourthly, that the obligation of compensation should extend only to captures made before the 7th August, in which the United States had confessedly forborne to use all the means in their power to procure restitution; and that, with respect to cases of captures made under the first, second, and third circumstances above enumerated, but brought in after the 7th August, the President had determined that all the means in the power of the United States should be used for their restitution, and that he thought that compensation would be equally incumbent on the United States in such of these cases (if any such should at any future time occur) where, the United States having decreed restitution, and the captors having opposed or refused to comply with or submit to such decree, the United States should forbear to carry the same into effect by force.

"Such was the promise. In what manner was that promise to be carried into effect? It was not absolute to restore, by the hand of power, in all cases where complaint should be made; if it had been such, there would have been no want of complaints, and France herself would have had a better reason for making them than any other party. No, the promise was conditional. We will restore in all those cases of complaint where it shall be established by sufficient testimony that the facts are true which form the basis of our promise—that is, that the property claimed belongs to British subjects; that it was taken either within the line of jurisdictional protection or, if on the high seas, then by some vessel illegally armed in our ports; and that the property so taken has been brought within our ports. By whom were these facts to be proved? According to every principle of reason, justice, or equity, it belongs to him who claims the benefit of a promise to prove that he is the person in whose favour, or under the circumstances in which the promise was intended to operate; and since it is the party promising redress who must first be convinced by testimony of the truths and justice of the complaint before the obligation of his promise can apply and bind him to performance of the stipulated relief, he is, of course, the proper person to decide under what forms, and in what manner, the examination and proof of these facts is to be conducted. Accordingly, every civilized nation has established laws and judicial forms for doing right, for redressing wrongs, and for restoring to the true owner property which may have been unjustly wrested from him."—Decision in the case of the Elizabeth, Ross, Master. Appendix to British Case, vol. v, p. 322.

* "It appears that by the expression 'all the means in their power,' they meant, first, those means which the Constitution and laws had provided for the redress of wrong and force whenever it should be rendered necessary by any act of opposition to the ordinary course of justice. That although doubts entertained by a part of the judicial establishment of its jurisdiction in these cases had placed them for a time under the immediate eye of the Executive power, yet to the complainant this produced no important change, since the same examination and proof of facts was required to establish the justice of his complaint and to guide the decision of the President, as would have been required before the Judges. That after the 18th February, 1794, the decision of the Supreme Court had removed those doubts which had for a time influenced the conduct of some of the inferior Courts. And it does not appear that after that decision there was any delay on the part of the inferior Courts in rendering, nor any opposition on the part of the captors to the execution of their process or decrees, insomuch that there existed no occasion thereafter to fulfil the ultimatum of the promise by exerting force to compel restitution."—The Elizabeth. Ibid., p. 327.

† "It appears from the first part of this inquiry that in promising to use all the means in their power for the restitution of vessels captured after that date, the United States did not undertake to make compensation in case those means should fail of their effect."—The Elizabeth. Ibid., p. 327.

‡ Case of the United States, p. 212.

§ Ibid., p. 130.

agreed between the two Governments that in cases where restitution of the prizes should be impossible, the amount of the losses should be ascertained by a method similar to that provided by the Treaty of Washington, and that a money payment should be made by the United States to Great Britain in lieu of restitution."*

Precedents appealed to by the United States.

"The United States are aware that some eminent English publicists, writing on the subject of the 'Alabama Claims,' have maintained that the obligation in such case to make compensation would not necessarily follow the proof of the commission of the wrong; but the United States confidently insist that such a result is entirely inconsistent with the course pursued by Great Britain and the United States, during the administration of General Washington, when Great Britain claimed of the United States compensation for losses sustained from the acts of cruizers that had received warlike additions in the ports of the United States, and the United States admitted the justice of the claim, and paid the compensation demanded."†

Violations of American neutrality in 1793-94.

Case of the United States, p. 37.

Her Majesty's Government deems itself entitled to ask whether these are correct representations of the facts stated in the foregoing pages.

One of the vessels equipped and armed for warlike use within the territory of the United States, was, after leaving it, commissioned as a public ship of war of the French Republic under the name of the Cassius. The subsequent history of the ship has been often referred to in argument, and may be briefly noticed here.

Case of the Cassius.

The Cassius had sailed from the Delaware River in January 1795, after an order to seize her had been issued, avoiding detention partly by artifice, and partly by threatening an armed resistance to the United States' authorities. She went to St. Domingo, was there formally transferred to the French Government and commissioned under the command of an American officer. She returned in August to Philadelphia. Whilst she was in that port, proceedings were instituted against her and her commander by the owners of an American vessel which had been captured by her at sea and condemned by a French prize court. The owners alleged that the capture was illegal, and claimed damages. The subsequent proceedings and correspondence are too long for recital, and may be read in well-known books.‡ It is sufficient to mention—

1. That the French Minister laid claim to the ship as a public ship of war, and refused to be a party to any proceedings in the local courts, or to admit in any way their jurisdiction. He refused also to furnish any proof of her alleged transfer to his Government, or of her character as a public ship, beyond his own declaration, given to the Executive as an act of courtesy, that she had been so commissioned at a certain date.

2. That the Government of the United States, whilst affirming, as an unquestioned fact (which had been incidentally proved on the trial of a person concerned in it), that the Cassius had been armed and equipped within the United States in violation of their neutrality, did not claim any right to seize and detain her, but, on the contrary, instructed its law officer to present to the Court a "suggestion" (as it was technically called) that as a public ship she ought to be released as exempt from civil proceedings, and her commander discharged.

3. That, on the release of the ship, the French Minister was informed by the Secretary of State that she was ready to be delivered to his order.

The French Minister, however, who had previously ordered her to be disarmed, refused to receive her, and she lay unclaimed for two years, at the end of which she was sold for a trifling sum by order of the Government, after a prior notification to the French Consul-General, who had answered that his Government had given him no authority in the matter.

3. *Violations of American Neutrality during the War carried on by Spain and Portugal against the Spanish American Colonies.*

3. Violations of American Neutrality during the war carried on by Spain and Portugal against the American Colonies.

During this war the ports of the United States were again used, and on a still larger scale, for fitting out privateers against nations with which the Republic was at peace. The vessels so fitted out were numerous, and they appear to have been for the most part owned, as well as commanded and manned, by citizens of the United States. The object of these ventures was plunder; the men employed in them were under little or no discipline or control; and they sometimes degenerated into actual piracy, from which, indeed, they do not seem to have been far removed. On more than one occasion the Courts of the United

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* Case of the United States, p. 131.

† Ibid., p. 136.

‡ A statement of the facts of this case will be found in a note by Mr. Dana in the Appendix to the Case of the United States, vol. vii, pp. 18–23.

Precedents appealed to by the United States.

States had to determine whether the captain and crew of the so-called privateer had been engaged in a *bonâ fide* exercise of the *jus belli*, though under a commission obtained from an unrecognized Government, or were, under the colour of such a commission, mere robbers on the high seas; and, more than once, persons so tried were condemned to suffer death as pirates.*

Correspondence between the United States and Portugal.

Repeated and earnest remonstrances on this subject were during several years addressed to the Government of the United States by the Ministers of Spain and Portugal. The complaints of Portugal extended over four years, from 1816 to 1820. An abstract of them will be found in a despatch addressed by Earl Russell to Mr. Adams and dated 30th August, 1865.† The Portuguese Minister was repeatedly told, in answer, that the Government of the United States could only exercise the powers with which it was invested by the law; and he was told that, before prosecutions could be instituted, a list of the persons chargeable should be furnished, together with evidence to support the charges. This correspondence has been referred to, but very inaccurately, in the Case of the United States. Thus a note of the 8th March, 1818, addressed by the Portuguese Minister to Mr. J. Q. Adams, the Secretary of State, is mentioned with the following comment.‡ "The note making this complaint contained neither proof of the allegations in the note as to the fitting out of the vessels in the United States, as to their being manned with Americans, nor indications from which the United States could have discovered those facts for themselves." The note in question, which was very short, contained the following passage, "An extract of the documents that prove these facts I have the honour of inclosing in the annexed paper. The documents themselves are at your disposition when required."§ But Mr. Adams did not ask for the documents. He contented himself with answering:—

Case of the United States, pp. 37, 38.

"The Government of the United States having used all the means in its power to prevent the fitting out and arming of vessels in their ports to cruize against any nation with whom they are at peace, and having faithfully carried into execution the laws enacted to preserve inviolate the neutral and pacific obligations of this Union, cannot consider itself bound to indemnify individual foreigners for losses by captures, over which the United States have neither control nor jurisdiction. For such events no nation can in principle, nor does in practice, hold itself responsible. A decisive reason for this, if there were no other, is the inability to provide a tribunal before which the facts can be proved.

"The documents to which you refer must of course be *ex parte* statements, which in Portugal or in Brazil, as well as in this country, could only serve as a foundation for actions in damages, or for the prosecution and trial of the persons supposed to have committed the depredations and outrages alleged in them. Should the parties come within the jurisdiction of the United States, there are Courts of Admiralty competent to ascertain the facts upon litigation between them, to punish the outrages which may be duly proved, and to restore the property to its rightful owners, should it also be brought within our jurisdiction and found upon judicial enquiry to have been taken in the manner represented by your letter. By the universal laws of nations the obligations of the American Government extend no further."‖

"The United States," wrote Mr. Adams, on the 30th September, 1820, "had repressed every intended violation" of neutral duties "which had been brought before their courts, *and substantiated by testimony conformable to principles recognized by all tribunals of similar jurisdiction.*"¶ They had also enacted more stringent laws. But it had been represented by Portugal that, in spite of these newly enacted laws, the acts complained of continued to be "both frequent and notorious;" it was affirmed that the officers of the Government were "lukewarm;" that notorious as the offences were, it was difficult to obtain the evidence which was required; and the multitude of persons interested directly or indirectly in privateering interposed great obstacles in the way of a prosecution. In a Note addressed to Mr. Adams on the 23rd November, 1819, by M. Corréa de Serra, the grievances of Portugal were recapitulated as follows:—

"I have the honour of submitting to you the following facts and considerations:—

"During more than two years I have been obliged by my duty to oppose the systematic and organized depredations daily committed on the property of Portugese subjects by people living in the United States and with ships fitted in ports of the Union, to the ruin of the commerce of Portugal. I do justice

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* See United States *v.* Klintock, 5 Wheaton, 144; United States *v.* Smith, ibid., 153; United States *v.* Furlong, ibid., 184; United States *v.* Jones, 3 Washington's C. C., 209; and the case of the officers and crew of the Irresistible, 18 Niles' Register, 256, 275.

† Appendix to British Case, vol. iv, No. 5, Correspondence respecting the Shenandoah, p. 25. Appendix to Case of the United States, vol. iii, pp. 553, *et seq.*

‡ Case of the United States, p. 139.

§ Appendix to British Case, vol. iii, p. 149.

‖ Ibid., p. 150.

¶ Ibid., p. 158.

to, and am grateful for the proceedings of the Executive, in order to put a stop to these depredations, but the evil is rather increasing. I can present to you, if required, a list of fifty Portuguese ships, almost all richly laden, some of them East Indiamen, which have been taken by these people during the period of full peace. This is not the whole loss we have sustained, this list comprehending only those captures of which I have received official complaints. The victims have been many more, besides violations of territory by landing and plundering ashore with shocking circumstances.

"One city alone on this coast has armed twenty-six ships which prey on our vitals, and a week ago three armed ships of this nature were in that port waiting for a favourable occasion of sailing for a cruize. Certainly, the people who commit these excesses are not the United States, but nevertheless they live in the United States, and employ against us the resources which this situation allows them. It is impossible to view them otherwise than a wide extended and powerful tribe of infidels, worse still than those of North Africa. The North Africans make prizes with leave of their Government according to their laws and after a declaration of war; but these worse infidels, of whom I speak, make prizes from nations friendly to the United States against the will of the Government of the United States, and in spite of the laws of the United States. They are more powerful than the African infidels, because the whole coast of Barbary does not possess such a strength of privateers. They are numerous and widely scattered, not only at sea for action, but ashore likewise to keep their ground against the obvious and plain sense of your laws, since most generally, wherever they have been called to the law, they have found abettors who have helped them to evade the laws by formalities.

"I shall not tire you with the numerous instances of these facts, but it may be easily conceived how I am heartily sick of receiving frequent communications of Portuguese property stolen, of delinquents inconceivably acquitted, letters from Portuguese merchants deeply injured in their fortunes, and seeing me (as often has been the case) oppressed by prayers for bread from Portuguese sailors thrown penniless on the shores after their ships had been captured."*

In the Case of the United States, the Minister who writes thus earnestly and vehemently is represented as "attaching little or no importance to the matter."† The reason given is, that he adds that he has chosen the moment to make a visit to Brazil. But, in the sentences which precede and follow, and of which no notice is taken in the Case of the United States, he has explained why he chose to leave his post at that particular time, namely, that until, by amendment of the law, or otherwise, the proper means should be found for putting an end to this "monstrous conspiracy," he found by experience that complaints were useless, and should refrain from continuing to present them without positive orders.‡

Case of the United States, pp. 38, 39.

Portugal asked (16th July, 1820) for the appointment of a Joint Commission; but this was refused by the United States. "The appointment of Commissioners," it was replied, "to confer and agree with the Ministers of Her Most Faithful Majesty upon the subject to which your letter refers, would not be consistent either with the Constitution of the United States nor with any practice usual among civilized nations. The judicial power of the United States is, by their Constitution, vested in their Supreme Court, and in Tribunals subordinate to the same. The Judges of these Tribunals are amenable to their country by impeachment, and if any Portuguese subject has suffered wrong by any act of any citizen of the United States within their jurisdiction, it is before these Tribunals that the remedy is to be sought and obtained. For any acts of citizens of the United States committed out of their jurisdiction and beyond their control, the Government of the United States is not responsible."§

In 1850 the proposal for a Commission to investigate these claims was renewed by Portugal. The Portuguese Minister then took notice that captures of Portuguese vessels by privateers, fitted out and equipped in ports of the United States, had continued to be made down to the year 1828; that upwards of sixty had been captured or plundered, and that the fitting out of these privateers at Baltimore had been a matter of public notoriety. He added, in the same despatch, the following statements:—

"The Undersigned begs leave to say, and he submits, that it was the duty of the United States' Government to exercise a reasonable degree of diligence to prevent these proceedings of its citizens, and that, having failed to do so, a just claim exists on the part of the Government of Portugal in behalf of its despoiled subjects, against the United States, for the amount of losses sustained by reason thereof.

"M. de Figanière would here recall to the Honourable Mr. Webster's attention the state of the negotiations between the two Governments on this subject. So early as the year 1816 the Chevalier

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* Appendix to British Case, vol. iii, p. 155.

† Case of the United States, p. 143.

‡ At p. 146 of the Case of the United States, Earl Russell is accused of having purposely omitted, in his correspondence with Mr. Adams, to notice the promises made by the American Government, that persons offending against the laws should be prosecuted. On the contrary, he expressly mentioned this promise. (See Appendix to Case of the United States, vol. iii, p. 558.) Again at pp. 142, 146, he is represented as approving, assuming, assenting to, all the arguments which he had simply recounted as having been ineffectually urged in the former controversy by Portugal.

Page 39.

Pages 38, 39.

§ Appendix to British Case, vol. iii, p. 157.

Precedents appealed to by the United States.

Correspondence between the United States and Portugal.

Corréa de Serra, His Most Faithful Majesty's Plenipotentiary, apprised Mr. James Monroe, the then Secretary of State, of these illegal armaments in Baltimore. In March, 1818, that Minister claimed indemnification by the Government of the United States for the losses sustained by Portuguese subjects from the captures made by the said privateers, to which application the Secretary of State, in a note dated the 14th of said March, replied that 'the Executive having used all its power to prevent the arming of vessels in its ports against nations with whom it was at peace, and having put into execution the Acts of Congress for keeping neutrality, it could not consider itself obliged to indemnify foreign individuals for losses arising from captures upon which the United States had neither command nor jurisdiction.'

"The Undersigned willingly admits that, if the Executive of the United States had used all its power to prevent the arming of vessels within its territory, and their sailing from its ports against the commerce of Portugal, no claim could have been set up by or in behalf of Portuguese subjects against the Government of the United States, but that the only remedy would have been against the wrong-doers, in the Courts of Law of the United States. But, in point of fact, the fitting out of these privateers was so notorious, that by due diligence on the part of the Government and the officers of the United States, the evil might have been prevented."

"It appears to the Undersigned that the only question to be examined is, whether the Government of the United States could, by the exercise of a reasonable degree of diligence, have prevented its citizens from going out of its ports in armed vessels to cruize against the commerce of Portugal, a friendly nation with which the United States had ever been at peace, and had uninterrupted commercial relations."

"The Undersigned respectfully states that the captures in question were made by American citizens, in vessels fitted out in ports of the United States, and that the fitting out of these vessels, he verily believes, was 'not checked by all the means in the power of the Government,' but that there was a 'neglect of the necessary means of suppressing' those expeditions.

"The public notoriety of these expeditions is easily shown. A reference to 'Niles's Register,' and other organs of public information published in those times, will suffice for this purpose; and nothing was more generally known at Baltimore than that these expeditions were commonly fitted out at that port. Indeed, privateers were not only equipped in Baltimore, but they were accustomed to bring their captures there for sale. The Government of the United States might, by the exercise of due diligence, have become acquainted with the facts, and prevented the privateers from sallying forth."

"The authorities of the State of Maryland were evidently negligent in permitting these warlike preparations in the port of Baltimore, and as no claim can be made by Portugal against that State, all complaints founded upon the negligence of the State authorities must, of course, be made against the Government of the United States, and this Government is, therefore, as the Undersigned conceives, liable for that neglect."*

To this despatch no answer appears to have been made. The Government of the United States had reiterated its refusal to refer the claims to a Commission, objecting that they were "obsolete."† It was, however, at the same time, pressing against Portugal a claim for compensation on account of an American privateer, destroyed in the port of Fayal in 1814—a claim, therefore, which was of still earlier date than those of Portugal, and was afterwards referred to arbitration and rejected.

Correspondence between the United States and Spain.

The complaints and expostulations of the Spanish Minister, Don Luis de Onis, were still more frequent and more vehement than those of the Minister of Portugal; but the substance of them was the same. The notoriety of the acts complained of, the openness with which they were done, the toleration of them by the authorities, the refusals of the Collectors of Customs to act on evidence within their reach,‡ the difficulty which the Spanish Consuls experienced in obtaining any testimony against unlawful speculations in which so many persons were interested, were strongly and repeatedly insisted on. These grievances were finally summed up in a note addressed to Mr. J. Q. Adams on the 16th November, 1818, in the course of the negotiations for the Treaty of the succeeding year:—

"Whatever may be the forecast, wisdom, and justice conspicuous in the laws of the United States, it is universally notorious that a system of pillage and aggression has been organized in several ports of the Union against the vessels and property of the Spanish nation; and it is equally so that all the legal suits hitherto instituted by His Catholic Majesty's Consuls, in the Courts of their respective districts, for its prevention or the recovery of the property, when brought into this country, have been, and still are, completely unavailing. The artifices and evasions by means of which the letter of the law has on these occasions been constantly eluded, are sufficiently known, and even the combination of interests in persons who are well known, amongst whom are some holding public offices. With a view to afford you and the President more complete demonstration of the abuses, aggressions, and piracies

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* Appendix to British Case, vol. iii, pp. 165, 166.

† Mr. Clayton to Senhor de Figanière e Morão, March 30, 1850.—Appendix to British Case, vol. iii, p. 163.

‡ An instructive specimen will be found in the correspondence which accompanies the note of Don Luis de Onis to Mr. J. Q. Adams, of November 2, 1817 (see Appendix to the British Case, vol. iii, p. 118). It does not appear that any answer was returned by the Secretary of State to this application.

alluded to, I inclose you correct lists, extracted from authentic documents deposited in the archives of this Legation, exhibiting the number of privateers, or pirates, fitted out in the United States against Spain, and of the prizes brought by them into the ports of the Union, as well as of those sent to other ports, together with the result of the claims made by the Spanish Consuls in the Courts of this country. Among them you will find the case of two armed ships, the Horatio and Curiazo, built at New York, and detained by His Majesty's Consul there, on the ground of their having on board thirty pieces of cannon concealed, with their carriages, and a crew of 160 men. On which occasion it was pretended that it could not be proved that these guns were not an article of commerce, and they finally put to sea without them, the extraordinary number of officers and crew passing for passengers. The number of privateers, or pirates, fitted out and protected in the ports of this Republic, as well as of the Spanish prizes made by them, far exceeds that contained in the within lists, but I only lay before your Government those of which I have certain and satisfactory proofs. The right of Spain to an adequate indemnity for all the spoliations committed by these privateers, or pirates, on the Crown and subjects of His Catholic Majesty, is undeniable; but I now submit it to your Government only to point out the extreme necessity of putting an end to these continued acts of hostility and depredation, and of cutting short these enormous and flagrant abuses and evils, by the adoption of such effectual precautions and remedies as will put it out of the power of cupidity or ingenuity to defeat or elude them. In vain should we endeavour amicably to settle and accommodate all existing differences, and thus establish peace and good understanding between the two nations, if the practice of these abuses, and the course of these hostilities and piracies on the commerce and navigation of Spain should, as heretofore, continue uninterrupted in the United States. From the tenor of the documents now inclosed, and of the reflections suggested by the very nature and state of things, the President cannot hesitate to assent to my proposal on this subject; and, as the Congress is now in session, I feel assured that the proper opportunity is afforded for the adoption of the necessary measures I have alluded to, and which I solicit as an essential basis of securing and maintaining a mutual friendship and good understanding between the two nations."*

The list of privateers fitted out in American ports, which was inclosed in the above note, included twenty-eight vessels of different classes.

Her Majesty's Government may be permitted here to recall the definition of due diligence presented to the Arbitrators in the Case of the United States:—

"The United States understand that the diligence which is called for by the Rules of the Treaty of Washington is a due diligence; that is, a diligence proportioned to the magnitude of the subject and to the dignity and strength of the Power which is to exercise it:—a diligence which shall, by the use of active vigilance, and of all the other means in the power of a neutral, through all stages of the transaction, prevent its soil from being violated:—a diligence that shall in like manner deter designing men from committing acts of war upon the soil of the neutral against its will, and thus possibly dragging it into a war which it would avoid:—a diligence which prompts the neutral to the most energetic measures to discover any purpose of doing the acts forbidden by its good faith as a neutral. and imposes upon it the obligation, when it receives the knowledge of an intention to commit such acts, to use all the means in its power to prevent it. No diligence short of this would be 'due;' that is, commensurate with the emergency, or with the magnitude of the results of negligence."† Case of the United States, p. 43.

The British Government may be permitted to express their belief that, if this definition had been contended for in 1818 by Spain and Portugal, it would have been deemed by the Government of the United States to require much qualification.

It is alleged in the Case of the United States‡ that, by the Treaty of the 22nd February, 1819, compensation was made by the United States to Spain for injuries similar to those which they assert that they have sustained from Great Britain. No compensation was paid to Spain. The Government of the United States appears to confound a reciprocal renunciation, in mass, of disputed claims not ascertained and not admitted to be valid, with a payment, by set-off, of claims the validity of which is disputed on neither side. By Article IX of that Treaty, for the purpose of putting an end to all differences between the two Powers, each agreed to renounce all claims upon the other, the renunciation including on one side "all claims of citizens of the United States upon the Government of Spain arising from unlawful seizures at sea, and in the ports and territories of Spain, or the Spanish Colonies;" and on the other all like claims of Spanish subjects upon the Government of the United States. On neither side was there an admission that the claims of the other were valid. On the part of the Government of the United States there was certainly no admission that it had been guilty of negligence. On the contrary, when, in the preceding negotiation, the Spanish Government had asked that the American Government should pledge itself to take some measures in order to remedy "the abuses Ibid., pp. 37, 57.

* Appendix to British Case, vol. iii, p. 131.
† Case of the United States, p. 158.
‡ Pages 136 and 213.

Precedents appealed to by the United States.

which, contrary to the law of nations and contrary to what is expressly stipulated in the Treaty of 1795, daily occur in some ports of the Union, in consequence of the vague and arbitrary interpretation which it seems the measures until now adopted are susceptible of, and by means of which the law is eluded"— in short, to amend its neutrality law—the refusal of the American Government was conveyed in these terms: "Of the many complaints which you have addressed to this Government in relation to alleged transactions in our ports, the deficiency has been, not in the meaning or interpretation of the Treaty, but in the proof of the facts which you have stated, or which have been reported to you, to bring the cases of complaint within the scope of the stipulations of the Treaty."* The complaint was, that many acts had been committed which were violations of international law as well as of the Treaty. The answer was, that no sufficient proof had been given of these violations. It may be observed that the claims of the United States against Spain were founded on complaints very different, and apparently of very inferior force, to those urged by Spain against the United States. It may be further remarked that the Treaty of 27th October, 1795, here referred to, contained, with other provisions for the protection of Spanish commerce, an agreement that no citizen or inhabitant of the United States should apply for or take any commission or letters of marque for arming any ship to act as a privateer against Spanish subjects or their property, from any State at war with Spain, and that any person doing this should be punished as a pirate. The obligations of the United States to Spain did not rest alone on the general principles of International Law, but on the express stipulations of a Treaty.

Later violations of the American Neutrality Laws.

4. *Later Violations of the American Neutrality Laws.*

Filibustering expeditions.

As the United States have appealed to their history as illustrating their conception of neutral duties, and of the measure of diligence which those duties require, it is necessary to refer to some later passages in that history, showing the impunity with which armed expeditions have been repeatedly, and with little or no attempt at concealment, organized within the United States, and dispatched thence against the territories of friendly nations.

The expeditions to which Her Majesty's Government desire more particularly to call the attention of the Arbitrators are—

The filibustering attacks under Lopez upon Cuba;
Those under Walker upon Mexico and Central America;
The Fenian raids upon Canada.

Expeditions of Lopez against Cuba.

Against Cuba, 1850.

The facts with regard to the expeditions undertaken against Cuba by Lopez from the United States are as follows:—

On the 11th August, 1849, the President of the United States issued a Proclamation stating that "there is reason to believe that an armed expedition is about to be fitted out in the United States, with an intention to invade the island of Cuba or some of the provinces of Mexico," and that "the best information which the Executive has been able to obtain points to the island of Cuba as the object of this expedition;" and calling upon "every officer of this Government, civil or military, to use all efforts in his power to arrest, for trial and punishment, every such offender against the laws providing for the performance of our sacred obligations to friendly Powers."

Lopez's first expedition, 1850.

The Spanish adventurer, Lopez, whose preparations for a marauding invasion of Cuba, with a view to its annexation to the United States, had given rise to this Proclamation, continued them undeterred. On the 7th May, 1850, he left New Orleans in a steamer with about 500 men, accompanied by two other vessels, and, on the 17th, landed at Cardenas, a small town on the north-west side of the island. Lopez occupied the town, but shortly afterwards troops arrived from Havana, and he was compelled to re-embark, and escaped to the United States.

On the 27th May Lopez was arrested; but, no delay being granted by the district Judge to procure evidence against him, he was discharged amid the cheers of a large crowd.

On the 15th July, forty-two of the persons who had been engaged with him in the attempted invasion, and who had been taken prisoners, were liberated by the Spanish authorities, and were taken to Pensacola by the United States' ship Albany.

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* Don Luis de Onis to Mr. J. Q. Adams, October 24, 1818 (Appendix to British Case, vol. iii, p. 129);—Mr. J. Q. Adams to Don Luis de Onis, October 31, 1818 (ibid., vol. iii, p. 130).

On the 21st July, the Grand Jury at New Orleans found a true bill against Lopez and fifteen others for violating the Act of 1818. The American Government, however, failed in making out its case against one or two of the parties, and finally abandoned the prosecution.*

Later violations of the American neutrality laws.

No sooner was Lopez at liberty than he set to work to organize another expedition, of which an account is given by the President of the United States in his Message to Congress of the 2nd December, 1851.

Filibustering expeditions against Cuba.

Lopez's second expedition, 1851.

"Since the close of the last Congress, certain Cubans and other foreigners resident in the United States, who were more or less concerned in the previous invasion of Cuba, instead of being discouraged by its failure, have again abused the hospitality of this country by making it the scene of the equipment of another military expedition against that possession of Her Catholic Majesty, in which they were countenanced, aided, and joined by citizens of the United States. . . . . Very early in the morning of the 3rd of August a steamer, called the Pampero, departed from New Orleans for Cuba, having on board upwards of 400 armed men, with evident intentions to make war upon the authorities of the island. This expedition was set on foot in palpable violation of the laws of the United States. Its leader was a Spaniard, and several of the chief officers, and some others engaged in it, were foreigners. The persons composing it, however, were mostly citizens of the United States. . . . . The steamer in which they embarked left New Orleans stealthily and without a clearance. After touching at Key West she proceeded to the Coast of Cuba, and on the night, between the 11th and 12th of August, landed the persons on board at Playtas, within about 20 leagues of Havana. The main body of them proceeded to, and took possession of, an inland village, 6 leagues distant, leaving others to follow in charge of the baggage, as soon as the means of transportation could be obtained. The latter having taken up their line of march to connect themselves with the main body, and having proceeded about 4 leagues into the country, were attacked, on the morning of the 13th, by a body of Spanish troops, and a bloody conflict ensued; after which they retreated to the place of disembarkation, where about fifty of them obtained boats and re-embarked therein. They were, however, intercepted among the keys near the shore by a Spanish steamer cruizing on the coast, captured and carried to Havana, and after being examined before a Military Court, were sentenced to be publicly executed, and the sentence was carried into effect on the 16th of August. . . . . According to the record of the examination the prisoners all admitted the offences charged against them, of being hostile invaders of the island. At the time of their trial and execution the main body of the invaders was still in the field, making war upon the Spanish authorities and Spanish subjects. After the lapse of some days, being overcome by the Spanish troops, they dispersed on the 24th of August; Lopez, their leader, was captured some days after, and executed on the 1st of September. Many of his remaining followers were killed, or died of hunger and fatigue, and the rest were made prisoners.

"But what gives a peculiar criminality to this invasion of Cuba is, that under the lead of Spanish subjects, and with the aid of citizens of the United States, it had its origin, with many, in motives of cupidity. Money was advanced by individuals, probably in considerable amounts, to purchase Cuban bonds, as they have been called, issued by Lopez, sold, doubtless, at a very large discount, and for the payment of which the public lands and public property of Cuba, of whatever kind, and the fiscal resources of the people and Government of that island, from whatever source to be derived, were pledged, as well as the good faith of the Government expected to be established. All these means of payment, it is evident, were only to be obtained by a process of bloodshed, war, and revolution. None will deny that those who set on foot military expeditions against foreign States by means like these are far more culpable than the ignorant and the necessitous whom they induce to go forth as the ostensible parties in the proceeding. These originators of the invasion of Cuba seem to have determined, with coolness and system, upon an undertaking which should disgrace their country, violate its laws, and put to hazard the lives of ill-informed and deluded men. You will consider whether further legislation be necessary to prevent the perpetration of such offences in future."

Walker's Expeditions against Mexico and Central America.

Walker's expeditions against Mexico and Central America, 1853, 1855, 1857, 1858, 1859, and 1860.

The spirit of reckless adventure which the Government of the United States had been unable to repress in 1851 and 1852, found vent in the following year in another direction.

The leader of the new enterprise was a citizen of the United States named Walker, who put himself at the head of a band of "filibusters," as they were termed, and determined on the conquest of the Mexican possessions in Lower California.

Against Mexico, 1853.

The attempt was made in October, 1853, by an expedition from San Francisco. The filibusters seized the town of La Paz, killed seven of its defenders, and wounded others, and committed various excesses. They were reinforced by another expedition, which sailed in the Anita from San Francisco in December, but were eventually driven out of the country.

The disturbed state of Central America made it the next tempting prey, and schemes were openly planned in the United States by so-called "transit" and "emigration" companies, for taking forcible possession of it. Walker was again put in command, and sailed from San Francisco on the 4th of May, 1855, with his filibusters. He arrived at Realejo on the 15th of June, and, after various adventures, during which he assumed the

* Appendix to British Case, vol. iii. Report of Neutrality Commission, p. 34.

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title of President of Nicaragua, and was recognized in that capacity by the United States Representative, he was surrounded at Rivas by the native forces in May, 1857. Throuhg the mediation of the commander of the United States' ship of war St. Mary's, he was allowed to surrender unmolested, and to be conveyed away on board that vessel, with the remnant of his followers.

On reaching the United States he began to recruit for a fresh expedition, and his preparations became so notorious, as to call for the following Circular to the District Attorneys and Marshals from General Cass, the United States' Secretary of State :—

Circular requiring the local authorities to use *due diligence* to prevent these expeditions.

"*Department of State, Washington, September* 18, 1857.

"From information received at this Department, there is reason to believe that lawless persons are now engaged, within the limits of the United States, in setting on foot and preparing the means for military expeditions to be carried on against the territories of Mexico, Nicaragua, and Costa Rica, Republics with whom the United States are at peace, in direct violation of the 6th section of the Act of Congress, approved 20th April, 1818 ; and under the 8th section of the said Act it is made lawful for the President, or such other persons as he shall empower, to employ the land and naval forces of the United States, and the militia thereof, 'for the purpose of preventing the carrying on of any such expedition or enterprise from the territories or jurisdiction of the United States.'

"I am therefore directed by the President to call your attention to the subject, and to urge you to use all *due diligence*, and to avail yourself of all legitimate means at your command, to enforce these and all other provisions of the said Act of 20th April, 1818, against those who may be found to be engaged in setting on foot or preparing military expeditions against the territories of Mexico, Costa Rica, and of Nicaragua, so manifestly prejudicial to the national character, and so injurious to the national interests.

"And you are also hereby instructed promptly to communicate to this Department the earliest information you may receive relative to such expeditions."

In October 1857, Lord Napier, Her Majesty's Minister at Washington, warned General Cass that he had been informed that more than 2,000 men had been enrolled for the invasion of Central America, funds had been subscribed to the amount of $250,000, arms had been purchased, and overtures were being made to proprietors of shipping for the transport of the force to the scene of action.*

1857. On the 10th of November, Walker was arrested at New Orleans on a charge of violating the neutrality laws of the United States. He was held to bail in $2,000 (about 400*l.*) to appear on the 11th for examination, and he went to sea on the following morning. He embarked, with 300 unarmed followers, in the passage-boat from New Orleans to Mobile, and in Mobile Bay the party were met by a small steamer named the Hicks, and were by it transferred to the Fashion, a river vessel of greater capacity, with about fifty recruits, who joined them from the City of Mobile. The United States' Government telegraphed to the Federal authorities at New Orleans to hire a steamer for the pursuit of the expedition, and empowered them also to use the steam revenue cutter (if there was one on the station) for the purpose. Lord Napier asked General Cass whether any armed steam-vessel of the national navy had been ordered to proceed on this duty, and was told, in reply, that there was no such vessel at the disposal of the Administration. Walker succeeded in effecting a landing for his band, who occupied Fort Castillo, but was himself intercepted by the Commodore in command of an United States' squadron, and taken to Aspinwall, in a ship of war, whence he returned to the United States. It does not, however, appear that any legal proceedings were taken against him for his open defiance of the law. If so, they could not have been very efficacious, as he set to work to prepare for another expedition on a larger scale, and, in May 1858, the Presidents of Nicaragua and Costa Rica appealed to the protection of International Law and of France, England, and Sardinia in an official Decree :—

1858.

Filibustering expedition against Central America.

"*Rivas, le* 1 *Mai*, 1858.

"Nous, Présidents des deux Républiques de Nicaragua et de Costa Rica :

"Considérant qu'une nouvelle invasion de filibustiers Américains menace de nouveau l'Amérique Centrale au préjuis de toutes les lois divines et humaines ;

"Considérant que l'Amérique Centrale, épuisée par trois ans de guerre, est dans l'impuissance de se défendre sans le concours de l'Europe ;

"Considérant qu'une délibération commencée des deux Gouvernements de Nicaragua et Costa Rica, a mis solennellement les deux Républiques sous la protection de la France, de l'Angleterre, et de la Sardaigne ;

"Considérant, enfin, que le péril est imminent, et qu'il est urgent de la conjurer sans attendre l'effet des mesures que ces trois Puissances Protectrices jugeront à propos de prendre ;

"Donnons pleins pouvoirs à M. Félix Belly de réclamer en notre nom le concours immédiat de tous les bâtiments de guerre Européens qu'il pourra rencontrer.

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* Correspondence respecting Central America, presented to Parliament 1860. Lord Napier to General Cass, October 9, 1857.

"Le chargeons spécialement de solliciter l'envoi à San Juan del Norte d'un ou de deux bâtiments de la station Française des Antilles.

"Et mettons les deux Républiques de Costa Rica et de Nicaragua et l'Amérique Centrale toute entière sous la garantie du droit des gens Européen, et de la législation spéciale édictée contre les pirates et les boucaniers."

Lord Napier in the note to General Cass, previously referred to, had commented on the ruinous consequences to those nations of the filibustering attacks to which they were exposed from the United States.

"It is obvious," he said, "that the most comprehensive reconciliation of Costa Rica and Nicaragua, accompanied by the re-establishment of the transit service by a respectable Company, under the auspices of the United States or England, or both, would still be inoperative for the welfare of those countries if they should continue to labour under apprehensions of invasion. It is superfluous to enlarge upon the calamities which the States in question have experienced from civil war and foreign adventurers. Of the native population not less than 40,000 are computed to have perished in the conflicts of the last two years, while more than 6,000 strangers have sacrificed their lives in the prosecution of criminal or visionary aims. "The destruction of property, the suspension of industry, the sacrifice of civilization, virtue and happiness, the diffusion of wrong and suffering incidental to such a struggle, are more easily imagined than described."

General Cass, in a note to Mr. Lamar, the Representative of the United States in Central America, dated the 25th of July, 1858, defended the action of the Government and its officers.

"That unlawful warlike enterprises have been carried on from the United States, composed of persons from different countries, against the territory of Nicaragua, is not to be denied. But during the whole progress of these illegal efforts, the Government of this country has faithfully performed the duty imposed upon it by the laws, as well through public proclamations against such enterprises as by giving the necessary directions to the proper officers to prevent their organization and departure, as by invoking the action of the judicial tribunals, and also by the employment of its naval force.

"It is unnecessary to support these assertions by detailed proofs. They are as well known in Costa Rica and Nicaragua as here. Sometimes, indeed, owing to the defect of proof, it has not been in the power of the Government to arrest these expeditions; but even when its exertions have not succeeded in preventing their departure, they have been fairly and generally successfully directed to prevent reinforcements of men and material from reaching the adventurers who had eluded the vigilance of the officers of the law. * * * *

"But the Presidents of these Republics deal in specific facts as well as in more general allegations. They charge that 'the Government of the United States has, according to official reports made to that of Costa Rica by its Minister Plenipotentiary at Washington, declared it was utterly powerless to prevent past attempts by the filibusters, or to protect the neutrality of Central America, owing to the insufficiency of the laws of the United States on this head.'

"This accusation is wholly without foundation. No such declaration was ever made by the Government of the United States. It would have been an act at once of fatuity and of falsity. As to the difficulties in the enforcement of these laws, they are not denied, and have given much trouble to the Government in the efforts it has made to carry them into effect; but that they are powerless, or have proved so, no one; in or out of the United States, has the right to assert. The Representatives of the Central American States may be called on as witnesses that, in all cases where they have given information to the Government that military expeditions against that region were about to be undertaken, measures have been immediately adopted to prevent their success, and to arrest and punish the offenders. Sometimes these efforts have failed, owing to causes not within the control of the Government, and sometimes they have been successful."

General Cass at the same time denied that a fresh invasion was preparing.*

Notwithstanding this assurance, Walker's preparations continued undisturbed until he was again on the eve of setting out with recruited forces, when, on the 30th October, President Buchanan issued a Proclamation very similar to that published in the time of Lopez:—

"Whereas information has reached me from sources which I cannot disregard, that certain persons, in violation of the Neutrality Laws of the United States, are making a third attempt to set on foot a military expedition within their territory against Nicaragua, a foreign State with which they are at peace. In order to raise money for equipping and maintaining this expedition, persons connected therewith, as I have reason to believe, have issued and sold bonds and other contracts pledging the public lands of Nicaragua and the transit route through its territory as a security for their redemption and fulfilment.

"The hostile design of this expedition is rendered manifest by the fact that these bonds and contracts can be of no possible value to their holders unless the present Government of Nicaragua shall be

* Correspondence respecting Central America, presented to Parliament 1860, pp. 219-220.

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Later violations of the American neutrality laws.

Filibustering Expeditions.

1858.

overthrown by force. Besides, the Envoy Extraordinary and Minister Plenipotentiary of that Government in the United States has issued a notice, in pursuance of his instructions, dated on the 27th instant, forbidding the citizens or subjects of any nation, except passengers intending to proceed through Nicaragua over the transit route from ocean to ocean, to enter its territory without a regular passport, signed by the proper Minister or Consul-General of the Republic resident in the country from whence they shall have departed. Such persons, with this exception, 'will be stopped and compelled to return by the same conveyance that took them to the country.' From these circumstances the inference is irresistible that persons engaged in this expedition will leave the United States with hostile purposes against Nicaragua. They cannot, under the guise which they have assumed that they are peaceful emigrants, conceal their real intentions, and especially when they know in advance that their landing will be resisted, and can only be accomplished by an overpowering force. This expedient was successfully resorted to previous to the last expedition, and the vessel in which those composing it were conveyed to Nicaragua obtained a clearance from the Collector of the port of Mobile. Although, after a careful examination, no arms or munitions of war were discovered, yet, when they arrived in Nicaragua, they were found to be armed and equipped, and immediately commenced hostilities.

"The leaders of former illegal expeditions of the same character have openly expressed their intention to renew hostilities against Nicaragua. One of them, who has already been twice expelled from Nicaragua, has invited, through the public newspapers, American citizens to emigrate to that Republic, and has designated Mobile as the place of rendezvous and departure, and San Juan del Norte as the port to which they are bound. This person, who has renounced his allegiance to the United States, and claims to be President of Nicaragua, has given notice to the Collector of the port of Mobile that 200 or 300 of these emigrants will be prepared to embark from that port about the middle of November.

"For these and other good reasons, and for the purpose of saving American citizens who may have been honestly deluded into the belief that they are about to proceed to Nicaragua as peaceful emigrants, if any such there be, from the disastrous consequences to which they will be exposed, I, James Buchanan, President of the United States, have thought it fit to issue this my Proclamation, enjoining upon all officers of the Government, civil and military, in their respective spheres, to be vigilant, active, and faithful in suppressing these illegal enterprises, and in carrying out their standing instructions to that effect; exhorting all good citizens, by their respect for the laws, and their regard for the peace and welfare of the country, to aid the efforts of the public authorities in the discharge of their duties."

The "standing instructions" which the officers of the Government were enjoined to carry out were the instructions to use "due diligence" in the Circular of 1857; but notwithstanding the efforts which it is to be presumed they made to exercise it, a party of Walker's filibusters embarked at Mobile in the sailing schooner Susan in December 1858, without a clearance, on the pretence of being bound on a coasting voyage. An unsuccessful attempt was made by the revenue cutter to intercept them, but there seems, on this as on the former occasion, to have been no ship of war with steam power available to pursue her, and the party got off to sea accordingly, and the Susan was joined unmolested by the Fashion and the Washington, with military stores.

The expedition afterwards broke down from the Susan being wrecked. Walker and his band then proceeded, in March 1859, to California, whence they were said to have

In 1859-60.

intended to make a descent on Punta Arenas; but this attempt was not carried into execution, and Walker returned to his usual employment of organizing expeditions in the United States.

In November 1859, he, for the third time, eluded the "due diligence" of the Mobile authorities, and an expedition set sail once more from that port in his old vessel the Fashion. The Fashion put back from want of stores, and some of the persons concerned in the expedition were arrested; but there is no report of their having been punished. He started again in June 1860, in the John A. Taylor, was met off Ruatan by another vessel with arms, and effected a landing on the Central American Coast. His career was brought to a close by his being shot at Truxillo in September 1860.

Fenian Raids against Canada.

Fenian raids against Canada.

"Irish Republican Union, 1848."

The first society formed in the United States for purposes hostile to Great Britain appears to have been the "Irish Republican Union."

Massachusetts' Emigrant Aid Society, 1855.

The course of affairs in Ireland prevented the "Irish Republican Union" from carrying out any projects which it may have entertained, and it was succeeded in 1855 by the "Massachusetts' Irish Emigrant Aid Society" which held its first Convention at Boston, on the 14th of August of that year, and under whose auspices secret societies were established in different parts of the United States.

Phœnix Society, 1859.

These secret societies continued under various names, until, in 1859, they were reconstituted as the Phœnix Society. The Civil War interrupted their progress, but in 1863

Fenian Brotherhood.

they again prominently appeared as the "Fenian Brotherhood" at a public meeting, held at Chicago, in November of that year.

Later violations of the American neutrality laws.

This meeting was reported to have been attended by 300 delegates, representing "Circles," including twelve from Military and Naval Circles.

The Second Annual Congress of the "Fenian Brotherhood" was held at Cincinnati in January 1865, when their President declared that they were "virtually at war" with England, and spoke of "this American institution called the Fenian Brotherhood."*

Meeting at Chicago in 1863. At Cincinnati in 1865.

A Congress of the Fenian Brotherhood met at Philadelphia on the 17th of October, 1865, and resolved upon the issue of "Fenian Bonds," and the establishment of the Irish Republic at New York. The Head Centre, as he was previously called, of the Brotherhood, was now styled President of the Irish Republic; the Executive Council entitled themselves "Senators," with a President; a house was hired at a rental of 1,200 dollars; Secretaries of the Treasury, of War, &c., were appointed; and the Irish Republic was declared to be founded at New York. The bonds had been prepared for the Fenians by the "Continental Bank-Note Company, New York," and were stamped "Office of the Secretary of Treasury." They were decorated with some emblems, and inscribed:—

Issue of Fenian bonds. Establishment of the Irish Republic at New York.

"It is hereby certified that the Irish Republic is indebted unto ————, or bearer, in the sum of (ten) dollars, redeemable six months after the acknowledgment of the independence of the Irish nation, with interest from the date hereof inclusive at 6 per cent. per annum, payable on presentation of this bond at the Treasury of the Irish Republic."

As a measure of precaution against the possible hostile incursions of Fenians which were being constantly threatened, the Canadian Government was compelled to call out for active service nine companies of the Provincial Militia in November 1865, and to station them along the most exposed parts of the frontier.†

On the 2nd of January, 1866, a Fenian Convention was held at New York, which lasted for nine days, and at which a detachment of the 99th State Militia, numbering twenty-two men, are stated to have acted as sentinels.

At a meeting at Buffalo, on the 26th of January, "General Sweeney pledged himself, if supported, that before next May he would conquer a certain territory, upon which the Irish flag should be planted, and which shall be made the base of operations against England for the liberation of Ireland." "Colonel Roberts promised, within ninety days, to have the green flag supported by the greatest army of Irishmen upon which the sun ever shone." ‡

At another meeting at Pittsburgh, Sweeney said:—

Fenian raids.

"We have made large purchases of arms and war material. If you are prepared to stand by us we promise that, before the summer sun kisses the hill-tops of Ireland, a ray of hope will gladden every true Irish heart, for by that time we shall have conquered, and got hostages for our brave patriots at home. The green flag will be flying independently to freedom's breeze, and we will have a base of operations from which we can not only emancipate Ireland, but also annihilate England. If you support us, I pledge my name, fame, property, and life to this holy cause."§

Raid of 1866.

The American newspapers were full of accounts of the ferment among the Irish. The "New York World" of March 5 said "The Fenian funds are disproportioned to any pacific object: they mean war or they mean nothing. The honest contributors suppose they are furnishing the sinews of war. If the receivers of the money do not intend to apply it to this object, they are a set of sharpers, practising on the credulity of their followers to levy a revenue for their own use. If they really mean war—if, as is given out, they contemplate the invasion of Canada—this is a serious business, which challenges the thoughtful attention of all Irishmen and all American citizens."

That the Fenians did mean war was as plain as speech could make it.

The "Irish-American" reported that, at a meeting at St. Louis, General Sweeney had announced that "considerable purchases of arms and war materials had already been made, and that large contracts for the same had been entered into." Roberts spoke without an attempt at disguise. "Now," he said, "there is but one outlet to Ireland by an armed force, and that is on a section of this Continent, where, too, the English power to-day rules supreme, and that section, if it does not come immediately beneath the influence of American power, must be made to come into the hands of the Irish people; for the only way we can strike at English commerce is to have a place where we can have a Government of our own, even before it should be recognized virtually on Irish soil.

* "Irish American," February 11, 1865.
† Correspondence relating to the Fenian Invasion, laid before the Canadian Parliament, June 1869, p. 139.
‡ New York "World," January 27, 1866.
§ "World," February 20.

Part III.

Later violations of the American neutrality laws.

Fenian raid of 1866.

Who will say that Andrew Johnson will not recognize the Irish Republic, even if it should be only in name, as long as we have soil that we can claim as our own. It is necessary to have some base from which we can send aid to our brothers who are struggling for liberty. We want a place from which we can send out privateers against English commerce; and by that means, I think, we can take enough to maintain a Government for fifty years very respectably."

War meetings were also held at Portland, Lima (Ohio), Newport, Milford, Waterford, and other places.

Information having reached the Canadian Government from many quarters showing that an inroad was imminent, and this information being supported by police reports of suspicious persons having been recognized entering Canada from the United States, as well as by open avowals at the Fenian public meetings, the Executive Council passed a Minute on the 7th of March, calling out for duty 10,000 of the Canadian volunteers.

It was not until the end of May that the Fenian preparations were completed. Stores of arms and ammunition had been placed at convenient stations along the frontier, and the word had been given for an attack. On the 31st of May the Fenians began the march, detachments of 200 and 300 men, calling themselves railway labourers on their way to the West, began to arrive at Buffalo and St. Albans from the large towns. By the evening of that day, a body of Fenians, estimated at upwards of 1,000, had reached Buffalo, and, on the morning of the 1st of June, 750 of them crossed over to Fort Erie, on the opposite bank of the Niagara River. What then followed is succinctly described in a despatch from Lord Monck of the 4th, published in the "Correspondence respecting the recent Fenian Aggression upon Canada," presented to Parliament in February 1867, which contains a full account of all that took place in Canada:—

"Sir, "*Government House, Ottawa, June* 4, 1866.

"Referring to my despatch of the 1st of June, I have the honour to state, for your information, that the body of Fenian conspirators who crossed the frontier from Buffalo to Fort Erie on the morning of Friday, June 1, proved to be between 800 or 900 men, and seem to have been well armed.

"I had previously had information that some such attempt would shortly be made, and a party of volunteers had been stationed at Port Colborne in anticipation of an attack.

"I have not yet had time to receive official accounts of the military operations, but from telegraphic reports which have reached me, I am able to give the following statement of what occurred, which I think may be considered authentic.

"Immediately on the receipt of the intelligence of the invasion, Major-General Napier pushed on by rail to Chippewa a force consisting of artillery and regular troops under Colonel Peacocke, 16th Regiment. Chippewa is about nineteen miles from Fort Erie, and there is no railway communication between the two places. On arriving at Chippewa, Colonel Peacocke moved on in the direction of Fort Erie. On the morning of Saturday, June 2, the body of volunteers stationed as already mentioned at Port Colborne, left that place by rail which runs parallel to the shore of Lake Erie, and went in the direction of Fort Erie as far as a place called Ridgway; here they left the railway and proceeded on foot, apparently with the intention of effecting a junction with Colonel Peacocke and his force.

"They came upon the Fenians encamped in the bush and immediately attacked them, but were outnumbered and compelled to retire on Port Colborne. This occurred some time on Saturday, 2nd June.

"Colonel Peacocke in the meantime was advancing in the direction of Fort Erie from Chippewa along the banks of the Niagara River, but was not able to reach the former place before nightfall.

"The Fenians, however, did not await his arrival, but recrossed the river during the night between the 2nd and 3rd June, to the number of about 750 men, and, as appears from the accompanying telegram from Mr. Consul Hemans, were immediately arrested by the authorities of the United States.

"I am happy to be able to inform you that the officers of the United States' Government appear to have exerted themselves to prevent any assistance being supplied to the invaders. I transmit copies of telegrams received on this subject from Mr. Consul Hemans.

"We have sixty-five prisoners in our possession, who have been by my direction committed to the common gaol at Toronto to await trial.

"I think it is creditable, both to the military and militia authorities in Canada, that they were in a position within twenty-four hours after the invasion of the Province at a point of the enemy's own selection, to place opposite to him such a force as compelled his precipitate retreat without even risking an engagement.

"I shall not fail to send you more full particulars when I shall have received the official reports from the officers engaged, but the main facts are as I have stated them above.

"I have, &c.,
(Signed) "MONCK."

The vigilance of the authorities of the United States was not aroused until after the raid had occurred, when the raiders were stopped in their retreat into United States' territory, and the party, now reduced by loss and desertion to 375, made prisoners with O'Neill, their leader, and their arms taken from them.

The stores of arms at Buffalo, Ogdensburgh, and St. Albans, were also seized by the United States' District Marshals. On the 5th of June, the arrest of the other Fenian leaders was ordered; and on the 6th, the President issued a Proclamation stating that it had become known to him that certain evil-disposed persons had begun to set on foot, and had provided and prepared, and were still engaged in providing and preparing means for a military expedition and enterprise, which expedition and enterprise was to be carried on from the territory and jurisdiction of the United States against British territory, and authorizing the United States' military forces and militia to be employed "to arrest and prevent the setting on foot and carrying on the expedition and enterprise aforesaid."

On the same day on which this Proclamation was signed, the Fenian prisoners at Buffalo were released on their own recognizances; and, on the 7th, O'Neill and the two other principal leaders were also released on bail.

Another band of Fenians made a demonstration near St. Albans, but retreated immediately on the appearance of a Canadian regiment.

Several arrests were made at St. Albans, and elsewhere; and Roberts, the President of the Fenian Senate, and chief instigator of the raid, was taken into custody at New York. His examination commenced on the 11th; on the 12th he was released on parole; and the District Attorney eventually abandoned the prosecution, from want of evidence, with the intention of preferring an indictment before the Grand Jury.

On the 23rd July, the House of Representatives of the United States passed the following Resolutions:—

"Resolved, That the House of Representatives respectfully request the President of the United States to urge upon the Canadian authorities, and also the British Government, the release of the Fenian prisoners recently captured in Canada.

"Resolved, That this House respectfully request the President to cause the prosecutions instituted in the United States' Courts against the Fenians to be discontinued if compatible with the public interests."

In pursuance of the second of these Resolutions, the Attorney-General instructed the District-Attorney at Buffalo to abandon the Fenian prosecutions there, and they were abandoned accordingly.

The prosecution was also withdrawn in the cases of Sweeney, Spear, McMahon, and the other leaders of the Vermont frontier demonstration, who had been arrested, but released on bonds of 5,000 dollars after a day's detention; and the intended indictment of Roberts was dropped as a matter of course.

In October the Government decided to return the arms which had been taken from the Fenians.

The "New York Times," of the 16th of October, gives an account of this transaction:—

"*Buffalo, Monday, October* 15.—"In pursuance of orders issued by the Attorney-General of the United States, with the concurrence of the Secretary of War, United States' District Attorney Dart gave instructions to General Barry, commanding the military district, to turn over the arms seized from the Fenians in this city, and at other points within the military district, upon the giving of a bond in double the value of the arms, to be approved by Judge N. K. Hall, that the arms shall not be used in violation of the neutrality laws. There were twenty boxes of arms seized here, valued at 2,500 dollars. This general order was procured at the intervention of Honourable James M. Humphry, of this city, the Cabinet taking the position that, as the Government had abandoned the prosecution of the Fenian officers and soldiers, it could not consistently hold their private property. Several thousand dollars worth of arms held at Erie, Oswego, Plattsburgh, Malone, Troy, and other places, will be turned over on the same terms. It is said that the arms will be sold to Santa Anna. P. O. Day, and T. B. Gallagher signed the bond."

These persons were well known as having taken an active part in promoting the raid, Gallagher being editor of the Buffalo "Fenian Volunteer." The bond which they signed was, it is scarcely necessary to point out, a mere form, as it would have been utterly impracticable to identify the arms on another occasion. The alleged intention of selling the arms to Santa Anna, who was then said to be meditating a descent on Mexico, was a mere transparent pretext.

The arms do not seem to have been all restored until the following year.

This closes the account of the first Fenian raid on Canada, which had cost the Dominion the loss of an officer and six privates of the Queen's Own Volunteer Rifles killed, and four officers and twenty-seven men wounded, many of them maimed for life. Besides this bloodshed there was the heavy cost to the country in pensions, gratuities, and payment of claims arising out of the raid, as well as the serious charge on the Treasury for summoning the Volunteers, and the hindrance to industry by such a disturbance of the country at a season of the year when agricultural pursuits were in full operation.

Part III.

Later violations of the American neutrality laws.

Second raid on Canada. 1870.

Second Raid on Canada.

A renewal of the attack was threatened in the autumn of 1866, and the Canadian Government was obliged to form a camp of Volunteers in the neighbourhood of Niagara Falls from August to the second week in October. The expense of this camp over and above the appropriated drill pay and loss to the industry of the Province from the withdrawal of a large number of men from their occupations amounted, in money, to 80,000 dollars.*

During the year 1867 the Fenian Brotherhood were occupied in promoting Fenian disturbances in England and Ireland, in which Halpin, Burke, McCafferty, and others who had come over from the United States for the purpose, were ringleaders.

In 1868 the Fenians obtained from the Government the return of the arms seized at St. Albans, consisting of about 1,300 muskets, and again proceeded to organize an expedition against Canada.

In November 1868, a Fenian Congress was held at Philadelphia, and O'Neill marched through the town at the head of three regiments of the so-styled Irish Republican army in green uniforms, numbering, as was reported, 3,000 men.†

During the year 1869 the Fenians were engaged in making fresh military preparations. On the 7th of February, 1870, O'Neill wrote to the Circles that a Congress of the Fenian Brotherhood was ordered to meet in New York on the 8th of March, and desired them to send none but the best and most reliable men, and if it be possible "to let them have a military record."

The accounts received from various quarters of O'Neill's avowed intentions, and the probability of some attack being made, rendered it necessary for the Canadian Government to be on the alert.

On the 9th of April 6,000 Militia were called out, and two Canadian gun-boats armed, manned, and fitted out, to cruise along the water boundary.

On the 12th of May, the Governor-General, at the opening of the Canadian Parliament, said, that "the information which reached my Government from many quarters as to the designs of parties styled Fenians, armed, and openly drilled in various parts of the neighbouring States, rendered it incumbent on me to apply to Parliament to pass an Act to suspend the Habeas Corpus Act, as well as to call out an armed force for the defence of the frontier." "The vigorous steps resorted to, and the laudable promptitude with which the native Militia responded to the call to arms, chilled the hopes of the invaders, and averted the menaced outrage, so that I now entertain a sanguine hope that I shall not be placed under the necessity of exercising the powers so entrusted to me."

In the third week in May the Fenian detachments began to collect and move towards the frontier. The first batch arrived at St. Alban's on the evening of the 23rd, and on the same day another party made their appearance at Malone. On the 24th the President issued a Proclamation stating that it had come to his knowledge that sundry illegal military enterprises and expeditions were being set on foot within the territory and jurisdiction of the United States against Canada, and enjoining all officers in the service of the United States to prevent those unlawful proceedings, and to arrest and bring to justice those engaged in them. On the 25th O'Neill's party made their attack from Franklin, a village near St. Alban's, but were at once repulsed and driven back across the frontier. O'Neill was then arrested by the United States' Marshal. A detachment of forty-five men of the 5th United States' Infantry arrived at St. Alban's in the evening to preserve order.

The end of the raid from Malone, in New York State, was the same. The Fenians took up a position, strengthened by a breastwork of logs and a trench, just beyond the United States' frontier, and, on being attacked, broke into a disorderly flight across it.

Trial and conviction of the raiders.

Several of the leaders were arrested and a quantity of arms taken possession of by the United States' authorities. Altogether thirteen tons of arms are said to have been seized at the two raids, and conveyed to United States' Arsenals; besides these a field-piece and numbers of rifles were abandoned on the scenes of action. On the 12th of July the trials of the Malone raiders took place: two were condemned to two years' imprisonment and a fine of 10 dollars, and one to one year's imprisonment and a similar fine. On the 29th of July the St. Alban's raiders were tried: O'Neill was sentenced to two years' imprisonment and a fine of $10; another of the leaders to nine months' imprisonment, and a fine of $5; and another to six months' imprisonment and a fine of 1 dollar. The

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* Canadian Parliamentary Papers.

† "Irish American," December 5, 1868.

Later violations of the American neutrality laws.

Fenian raiders pardoned by the President.

proceedings against two others were postponed. On the 12th of October O'Neill and his companions received an unconditional pardon from the President.

On the day on which the pardon was granted the President published a Proclamation, warning evil-disposed persons that the law forbidding hostile expeditions against friendly States would for the future be rigorously enforced.

President's Proclamation.

"Whereas divers evil-disposed persons have, at sundry times, within the territory or jurisdiction of the United States, begun, or set on foot, or provided, or prepared the means for military expeditions or enterprises to be carried on thence against the territories or dominions of Powers with whom the United States are at peace, by organizing bodies, pretending to have powers of Government over portions of the territories or dominions of Powers with whom the United States are at peace, or by being or assuming to be members of such bodies; by levying or collecting money for the purpose or for the alleged purpose of using the same in carrying on military enterprises against such territories or dominions; by enlisting or organizing armed forces to be used against such Powers, and by fitting out, equipping, and arming vessels to transport such organized armed forces to be employed in hostilities against such Powers;

"And whereas it is alleged, and there is reason to apprehend, that such evil-disposed persons have also, at sundry times, within the territory and jurisdiction of the United States, violated the law thereof by accepting and exercising commissions to serve by land or by sea against Powers with whom the United States are at peace, by enlisting themselves or other persons to carry on war against such Powers; by fitting out and arming vessels with intent that the same shall be employed to cruize or commit hostilities against such Powers, or by delivering commissions within the territory or jurisdiction of the United States for such vessels, to the intent that they might be employed as aforesaid;

"And whereas such acts are in violation of the laws of the United States in such case made and provided, and are done in disregard of the duties and obligations which all persons residing or being within the territory or jurisdiction of the United States owe thereto, and are condemned by all right-minded and law-abiding citizens:

"Now, therefore, I, Ulysses S. Grant, President of the United States of America, do hereby declare and proclaim that all persons hereafter found within the territory or jurisdiction of the United States committing any of the afore-recited violations of law, or any similar violations of the sovereignty of the United States for which punishment is provided by law, will be rigorously prosecuted therefor, and upon conviction and sentence to punishment, will not be entitled to expect or receive the clemency of the Executive to save them from the consequences of their guilt, and I enjoin upon every officer of this Government, civil or military or naval, to use all efforts in his powers to arrest, for trial and punishment, every such offender against the laws providing for the performance of our sacred obligations to friendly Powers."

Raid of 1871.

On the 5th of October last, less than a year after his release and after this Proclamation, O'Neill led a third raid against Canada, on the Pembina frontier, but was arrested by the United States' troops, and this time met with entire immunity, being discharged on the ground that there was no evidence of his having committed any overt act within the United States' territory.

This closes the history of the Fenian raids.

Military Expeditions in aid of the Cuban Insurrection.

Military expeditions in aid of the Cuban Insurrection.

The Proclamation of October 1870, which has been cited above, referred not only to the proceedings of the Fenians but to expeditions in aid of the Cuban insurrection.

Mr. Roberts, the Spanish Minister at Washington, represented to the United States' Government that he had "seen the departure of various filibustering expeditions, in broad daylight and unmolested, from New York and other Federal ports, and had finally felt himself obliged, by the incomprehensible apathy of the authorities, to take the initiative in order to prevent these repeated infractions of the neutrality laws."—(Mr. Roberts to Mr. Fish, September 18, 1869.)*

The principal expeditions referred to seem to have been those undertaken in the Grapeshot and Peritt, which landed parties of men and supplies in Cuba in May.

The United States' Secretary of State, in his reply, said that he "was forced to admit with regret that an unlawful expedition did succeed in stealthily escaping from the United States and landing on the shores of Cuba," but that it had escaped unnoticed by either the United States' officers or, as he believed by the Agents of the Spanish Government.*

A further expedition was subsequently dispatched from New Orleans in the ship Cespedes or Lilian, in October 1869, to Cedar Keys, Florida, where she was met by a body of from 300 to 350 armed men, under command of a Cuban named Goicurria, who had sailed from New York to join her in the steamer Alabama. The Lilian failed in landing the expedition on the Cuban coast, and was finally stopped and condemned for a breach of the British Foreign Enlistment Act at Nassau.

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* Papers relating to Cuban affairs presented to the House of Representatives, February 21, 1870, pp. 133-138.

Part III.

Later violations of the American neutrality laws.

Military expeditions in aid of the Cuban insurrection.

A still more notorious vessel is the Hornet or Cuba. The Hornet is an iron paddle-wheel steamer, originally a blockade-runner, of 820 tons. She was captured during the civil war, and taken into the United States' Navy as a dispatch-boat, in which capacity she carried eight guns. She was sold, in June 1869, to Señor Macias, and it is believed retained her portholes. After being refitted at Kensington, near Philadelphia, she cleared for Halifax, but was detained for inquiry as to her intended proceedings. At Halifax she was again detained on the assertion that she had heavy guns on board, but, this proving incorrect, she was released and sailed along the United States' coast. Coals, supplies, and arms are stated to have been shipped on board, and she then put in at Wilmington, North Carolina, flying the Cuban flag. Here she was arrested for violation of the neutrality laws, and her commander, a United States' citizen, and twenty-three others, tried, and the vessel herself taken possession of by the United States' authorities.

The result of the trial was, that the Judge held that only two acts were shown to have been committed within the jurisdiction of the United States, from which an intent to violate the neutrality laws could be inferred. These were the enlistment of a witness, D. D. Munro, and the reception of a cargo of coal in Long Island Sound. The commander and sixteen of the prisoners were discharged, and six others released on bail.* It does not appear that any further proceedings were taken against them.

The vessel was then libelled in the Admiralty Court, but after some delay was returned to her former owner, Señor Macias, on bonds being given by Senator Chandler and General Butler, that she would not be again used in violation of the neutrality laws. She, however, has since recommenced her career, and after taking in stores and, as is supposed, arms, at Aspinwall, succeeded in landing an expedition in Cuba in January 1871. She then took refuge at St. Domingo, and in January of the present year was convoyed to Baltimore under the protection of a United States' ship of war. It remains to be seen whether any legal proceedings will be instituted against her, and, if so, what will be their result.

The views held by the United States' Secretary of State with regard to the Cuban Junta at New York, by whom these expeditions were concerted, were thus expressed in a despatch to the United States' Minister at Madrid in January 1870 :—

"Had the Cuban Junta," he says, "expended their money and energy in sending to the insurgents arms and munitions of war, as they might have done consistently with our own statutes, and with the law of nations, instead of devoting them to deliberate violation of the law of the United States, and had they, in lieu of illegally employing persons within the dominions of the United States to go in armed bands to Cuba, proceeded thither unarmed themselves to take personal part in the struggle for independence, it is possible that the result would have been different in Cuba, and it is certain that there would have been a more ardent feeling in the United States in favour of their cause, and more respect for their own sincerity and personal courage."†

And in a letter to Mr. Roberts, dated the 28th of December, Mr. Fish pressed upon Mr. Roberts the necessity of legal evidence being furnished, in order to enable the local authorities to act:—

"The Undersigned takes the liberty to call the attention of Mr. Lopez Roberts to the fact that a District Attorney of the United States is an officer whose duties are regulated by law, and who, in the absence of executive warrant, has no right to detain the vessels of American citizens without legal process, founded not upon surmises, or upon the antecedent character of a vessel, or upon the belief or conviction of a Consul, but upon proof submitted according to the forms required by law."‡

Her Majesty's Government do not adduce these instances of recent violations of the Neutrality Laws of the United States, the facts of which are notorious, in any spirit of accusation or recrimination. But the attention of the Arbitrators has been called to the long series of illegal expeditions which have been organized and dispatched from the United States against the territories of friendly nations during the last twenty-two years, as instances of the flagrant manner with which the laws of the United States have been evaded, as shown by the Messages of successive Presidents, in spite of what Her Majesty's Government assumes to have been the intentions and efforts of the executive authorities. From these multiplied examples the Arbitrators may be enabled to form an estimate of the measure of "due diligence" in executing laws for the prevention of such enterprises which the United States have considered sufficient in their own authorities, and could not, therefore, reasonably expect to be exceeded by the authorities of other countries.

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* United States *v.* the officers of the steamship "Cuba," reported in "Wilmington Journal," October 31, 1869.

† Papers relating to Cuban affairs, presented to the House of Representatives, February 21, 1870, p. 69.

‡ Papers relating to the Foreign Relations of the United States, transmitted to Congress with the Annual Message of the President, December 4, 1871, p. 786.

Recapitulation.

Out of this retrospect, which has been rendered necessary by the statements introduced into the Case of the United States, the following observations arise:—

1. The argument of the United States, that a neutral Government is not only bound to exert reasonable care for the purpose of preventing violations of its neutrality, but is bound to apply to the various duties which purport to be enumerated in the Three Rules, pursued into their minutest details, and pushed even beyond the natural meaning of the words employed, a diligence the most energetic, vigilant, and exact, finds (whether it be true or not) no support in this history. However rigorously the United States may now be disposed to estimate the obligations of other Powers, they have not so construed their own.

2. The argument that compensation is due, as of right, for any loss sustained in war by a belligerent, which may be traced to a relaxation of diligence on the part of neutral Powers in preventing violations of neutrality, whether it be sound or not in itself, is not supported by any precedent adduced. The United States have never paid, nor have they ever admitted a liability to pay, such compensation.

3. Where compensation has been claimed in such cases, it has been limited to the values of ships and cargoes captured by vessels unlawfully fitted out and armed; and the claim has never been admitted, except when such prizes have been brought by the captors within the jurisdiction of the Neutral Power.

4. The position that a neutral Government is under an obligation to seize and detain any armed ship entering its ports, even though commissioned as a public ship of war, which has received any equipment or any adaptation for war within the jurisdiction of the neutral, is equally unsupported. There is no trace of such an obligation. The American Government did indeed, in 1793, direct that privateers which had violated its neutrality should not have asylum in its ports. But, even this (which is a very different thing) it acknowledged no obligation to do; and the exclusion (which does not appear to have been extended to public ships of war) seems to have been by no means steadily enforced.

Finally, Her Majesty's Government cannot forbear to remark that the history of this subject is from first to last a history of unlawful enterprises originated either in the United States, or by citizens of the United States in other countries. Great Britain, Spain, Portugal, Mexico, the Central American Republics, Cuba, and Canada, have from time to time been harassed by privateers fitted out in the ports of the Union, or hostile expeditions organized and assembled within its territory. And when, in 1861, civil war broke out within the Union itself, it was by American citizens that the plan was formed to abuse, for the more effectual prosecution of that war, the soil and waters of a neutral and friendly nation. Baffled, in the great majority of cases, by the restraints of the law and the watchfulness of the Executive, they contrived, in a very few, to elude those restraints. They procured ships, transported them to distant seas, armed and manned them there, and employed them in cruizing against their countrymen, not indeed for the sake of plunder or profit, but to assist the people of their own States in a struggle for independence. The Southern States have returned to their allegiance. They have been treated with clemency, and no attempt has been made to exact from them, by fines or forfeitures, pecuniary reparation for the losses which the Government and the rest of the people of the United States have sustained through their means. The acts which they directed and authorized, when in arms against the Union, are now, on behalf of the nation of which they form an important part, made the subject of complaints and demands against Great Britain. Her Majesty's Government has been ready and willing to give the United States all reasonable satisfaction by submitting the question to the award of an impartial Tribunal. But it is surely no unjust observation that, if ever there was a case in which a Power, deeming itself aggrieved, might have been expected to state its complaints with moderation, and to make ample allowance for administrative difficulties and unavoidable deficiencies of proof, that occasion is the present, and that Power is the United States.

Part IV.

Various complaints of the United States against Great Britain.

Traffic in munitions of war.

PART IV.

Various Complaints of the United States against Great Britain: Traffic in Munitions of War.

THE Fourth Part of the Case of the United States contains a general and comprehensive statement of all the complaints which they conceive themselves to have against Great Britain. It will be found, on examination, that these complaints are of two classes. A small number of them have reference to the vessels enumerated at p. 320 of the Case, or some of them, and charge or suggest against Great Britain certain failures of duty in respect of those vessels. A much larger number have no reference whatever to those vessels, and do not charge or suggest any failure of duty in respect of them or any of them. The former class are within the scope of the reference to arbitration; the latter are not within it.

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In the Case of the United States, however, these various complaints have been connected together in a narrative which draws no distinction between those which are and those which are not relevant to the questions at issue.

Analyzing the narrative, we find that it is in substance as follows:—

The Government of the Confederate States sent to England, to Nassau, to Havaña, and other places, agents instructed to purchase arms and munitions of war, with other things of which the Confederate States stood in need, and to procure ships suitable for warlike use. The persons sent to England on this errand were supplied with funds by remittances of specie and consignments of cotton, all necessary payments being made by drafts on a mercantile house in Liverpool, who were "depositories" of the funds. The whole Southern coast being blockaded, it was necessary for the agents to send their purchases in such a manner as to elude the blockade. The British islands of New Providence and Bermuda offered, from their geographical position, peculiar facilities for the purpose; and advantage was taken of these facilities, large quantities of goods being sent thither from England and forwarded thence to different Confederate ports. Some of the ships employed in this traffic were the property of the Confederate Government; some others were chartered by its agents. The colonial authorities, it is affirmed, encouraged the trade, and placed obstacles in the way of the United States' cruisers which were endeavouring to suppress it. It is added that the difficulties thus created were enhanced by an order of the British Government, which directed that vessels of war should not be admitted, unless in case of distress, to the ports of the Bahama Islands. Meanwhile the Confederate agents contracted with shipbuilders in England and Scotland for ships suitable for war to be built to order, and purchased some others in the market. Three or four of these vessels they succeeded in sending to sea; the remainder were stopped. They also purchased guns, munitions of war, and ships' stores, and dispatched them to various places—the Azores, the Madeira Islands, one of the Bahamas, the coast waters of France—where they were put on board of the vessels. English seamen were induced to serve in them, and were paid their wages through the instrumentality of the Liverpool house. The British Government required, before it would order the seizure of a suspected vessel, evidence which could be produced in a court of justice. It declined during the war to propose to Parliament any alteration of the law applicable to such cases, stating that the law was sufficient, and that, where it had failed, the deficiency had been in timely proof that the acts complained of were within the law.

This is the substance of the complaints of the United States, stated in simple terms. Some of them are true, some erroneous, and the greater part irrelevant to the questions referred to the Tribunal.

It is the right of Great Britain to decline absolutely any discussion on the question whether, in taking no steps to prevent the conveyance of arms and munitions of war from British or Colonial ports to the Confederate States, or in any matter whatever connected with that traffic, her Government failed to discharge any international duty. But that

something should here be said on this subject may perhaps be convenient to the Arbitrators.

In the Case presented to the Tribunal on the part of Great Britain, the following propositions were laid down as agreeable to the principles of International Law and the practice of nations:—

"A neutral Government is bound to exercise due diligence, to the intent that no place within its territory be made use of by either belligerent as a base or point of departure for a military or naval expedition, or for hostilities by land or sea.

"A neutral Government is not, by force of the above-mentioned obligation or otherwise, bound to prevent or restrain the sale within its territory, to a belligerent, of articles contraband of war, or the manufacture within its territory of such articles to the order of a belligerent, or the delivery thereof within its territory to a belligerent purchaser, or the exportation of such articles from its territory for sale to, or for the use of, a belligerent."

Her Majesty's Government has hitherto believed that, on this subject, no difference of opinion existed between Great Britain and the United States. By no Power has the principle been asserted so strongly, unreservedly, and consistently as by the United States, and no nation has more freely acted upon it.*

These propositions are true without any qualification, and they have long been accepted and acted upon as true without qualification by the maritime Powers of Europe and of the American continent. Each belligerent is at liberty to profit by the traffic, so far as it may be of use to him; he is free also to repress it, if he can, so far as it is of assistance to his enemy; and for this latter purpose he is armed by the custom of nations

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* It can hardly be necessary to cite examples. The emphatic enunciation of this doctrine in Mr. Jefferson's letter to Mr. Hammond (15th May, 1793) has been often referred to—

"The purchase of arms and military accoutrements by an agent of the French Government in this country, with an intent to export them to France, is the subject of another of the memorials; of this fact we are equally uninformed as of the former. Our citizens have been always free to make, vend, and export arms. It is the constant occupation and livelihood of some of them. To suppress their callings, the only means perhaps of their subsistence, because a war exists in foreign and distant countries, in which we have no concern, would scarcely be expected. It would be hard in principle and impossible in practice. The law of nations, therefore, respecting the rights of those at peace, does not require from them such an internal derangement in their occupations. It is satisfied with the external penalty pronounced in the President's Proclamation, that of confiscation of such portion of these arms as shall fall into the hands of any of the belligerent Powers on their way to the ports of their enemies. To this penalty our citizens are warned that they will be abandoned, and that even private contraventions may work no inequality between the parties at war, the benefit of them will be left equally free and open to all."—(Appendix to British Case, vol. v, p. 242.)

It will be observed that this was subsequent to a Proclamation issued by the President, in which conveyance of contraband to a belligerent was specified as among the acts involving a liability to "punishment or forfeiture under the law of nations," and notice was given that prosecutions would be instituted against all persons who should, within the cognizance of the Courts of the United States, "violate the law of nations with respect to the Powers at war or any of them." It was written in answer to a representation by the British Minister to the effect that he had "received information from various respectable quarters, that a considerable quantity of arms and military accoutrements, which an agent of the French Government has collected and purchased in this country, is now preparing to be exported from New York to France."

"The secrecy with which a transaction of this nature is generally conducted, has rendered it impossible for the Undersigned to procure precise proof of it. Entertaining, however, no doubt of the existence of the fact, he esteems it his duty to lay it immediately before the Executive Government of the United States, which he trusts will deem it more expedient (if any measures for the purpose can be devised) to prevent the execution of this contravention of the President's Proclamation than to expose vessels belonging to its citizens to those dangers and difficulties which may result from the circumstance of their carrying articles of the description abovementioned."—(Mr. Hammond to Mr. Jefferson, May 8, 1793.)—Appendix to British Case, vol. v, p. 241.

Mr. Hammond's cautious language shows that he understood the effect of a Proclamation of neutrality as calling attention to the existing prohibitions, not as creating new ones. The Government of the United States apparently do not understand this. He appears to have accepted Mr. Jefferson's answer without demur.

The Minister of the Mexican Republic, in 1862, when Mexico was invaded by a French army, urged the American Government to prohibit the export of mules and waggons which French agents were purchasing for the use of the expedition. Mr. Seward refused, citing the following authorities:—

Instructions to Collectors of Customs, issued by Alexander Hamilton, Secretary of the Treasury, August 4, 1793.

"The purchasing and exporting from the United States, *by way of merchandize*, articles commonly called contraband, being generally warlike instruments and stores, is free to all parties at war, and is not to be interfered with. If our own citizens undertake to carry them to any of these parties, they will be abandoned to the penalties which the laws of war authorize."—(American State Papers, Foreign Relations, vol. 1, p. 141.)

Mr. Webster to Mr. Thompson, July 8, 1842.

"It is not the practice of nations to undertake to prohibit their own subjects from trafficking in articles contraband of war. Such trade is carried on at the risk of those engaged in it under the liabilities and penalties prescribed by the law of nations or particular Treaties."—(Webster's Works, vol. 6, p. 452.)

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with exceptional powers, which exist only during war, the power to detain, search, and capture on the high seas the vessels of nations with which he is at peace. The justification of the usage which entrusts these powers to the belligerent may be found in the fact that the repression of the trade, so far as it militates against his interests, is abandoned to him, and is not a duty of the neutral.

It is perfectly immaterial in the view of International Law whether the contraband goods are purchased in the neutral market by persons who resort thither for the purpose, or are shipped to order, or consigned for sale to persons in the belligerent country. It is immaterial whether the purchases are effected by agents of the belligerent Government or by private speculators. It is immaterial whether the ownership of the vessels in which the transportation is effected is belligerent or neutral: the only differences are that, in the former case, the neutral supplies the merchandize alone, whilst in the latter, he supplies both merchandize and carriage, hazarding the chances of detention and capture: in the former, the cargo is liable to condemation as enemy's goods in an enemy's ship; in the latter, as contraband goods in the ship of a neutral. It is immaterial whether the ship which conveys them is chartered or owned by private persons or by the belligerent Government itself, provided she be employed only for carriage and not armed for war. Nor, again, does the proximity of a neutral port, whence the trade is carried on, to either belligerent country, make any difference in the duties of the neutral Government. Nor does it make a difference that the coasts or harbours of either belligerent are blockaded, more or less effectively, by the other. As the neutral Government is under no obligation to prevent breaches of blockade and the export of contraband when the transactions are distinct, so it is under no obligation to prevent them when the transactions are combined.

It is necessary to state this principle firmly and clearly. Otherwise it would be at the mercy of every powerful belligerent. There never was a war in which some special circumstances might not be pleaded and special reasons given for setting it aside in the interest of one party or the other.

Arms and Military supplies purchased by the United States.

At the commencement and during the course of the war both belligerents resorted to Great Britain for supplies of arms and military material, of which both were in need. The wants of the Government of the Union appear to have been at first even more pressing than those of its adversaries, since the Government which preceded that of Mr. Lincoln had removed, it is said, considerable quantities of arms from the Northern arsenals to those in the Southern States.

Mr. Webster's Instructions of July 8, 1842, *cited in Gardner's Instructions, American International Law, page* 552.

"That if American merchants in the way of commerce, had sold munitions of war to Texas, the Government of the United States, nevertheless, were not bound to prevent it, and could not have prevented it without a manifest departure from the principles of neutrality."

President's Message, 1st Session, 34th Congress.—Franklin Pierce, President; William L. Marcy, Secretary of State.

"The laws of the United States do not forbid their citizens to sell to either of the belligerent Powers articles contraband of war, or take munitions of war or soldiers on board their private ships for transportation; and although, in so doing, the individual citizen exposes his property or person to some of the hazards of war, his acts do not involve any breach on national neutrality, nor of themselves implicate the Government."—(Appendix to British Case, vol. v, p. 332.)

The passage last cited proceeds as follows:—

"Thus, during the progress of the present war in Europe, our citizens have without national responsibility therefor sold gunpowder and arms to all buyers, regardless of the destination of those articles. Our merchantmen have been, and still continue to be, largely employed by Great Britain and France in transporting troops, provisions, and munitions of war to the principal seat of military operations, and in bringing home the sick and wounded soldiers; but such use of our mercantile marine is not interdicted either by the international or by our municipal law, and, therefore, does not compromise our neutral relations with Russia."

That the United States still adhere to this principle was abundantly proved in the course of the recent war between France and Germany.

It is in the power, of course, of a neutral Government to prohibit the exportation of contraband. if it think fit, and if such a prohibition be within the limit of its constitutional authority, but even such a prohibition gives no right to either belligerent.

"Der Verkauf an und für sich allein kann zwar von einem neutralen Staate selbst seinen Angehörigen untersagt werden; allein durch die Ueberschreitung dieses Verbotes macht man sich nur dem eigenen Staate verantwörtlich; der kriegführende selbst hat seinerseits keine Befügniss die Contravention zu ahnden."—Heffter, § 161, 5th ed.

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Arms and military supplies purchased by the United States.

On this subject the Secretary of War at Washington, in his Report to the President on the 1st of July, 1861, made the following statements:—

"Previous to the early part of last year the Government had a supply of arms and munitions of war sufficient for any emergency; but through the bad faith of those intrusted with their guardianship, they were taken from their proper depositories and distributed through portions of the country expected to take part in the contemplated rebellion. In consequence of the serious loss thus sustained, there was available, at the commencement of the outbreak, a much less supply than usual of all kinds. But through the zeal and activity of the Ordnance Bureau the embarrassment thus created has been in a great measure overcome. As the capacity of the Government armouries are not equal to the supply needed, even after having doubled the force of the Springfield Armoury, the department found it absolutely necessary to procure arms to some extent from private manufacturers. . . . Some patriotic American citizens resident in Europe, fearing that the country might not have a sufficient supply, purchased, on their own responsibility, through co-operation with the United States' Ministers to England and France, a number of improved cannon and muskets, and at your instance this department accepted the drafts drawn to defray the outlay thus assumed. A perfect battery of six Whitworth 12-pounder rifled cannon, with 3,000 rounds of ammunition, the munificent donation of sympathizing friends in Europe, has also been received from England."*

In his report of 1st December in the same year, the same Minister said:—

"As stated in my last report, at the commencement of this rebellion the Government found itself deficient in arms and munitions of war, through the bad faith of those intrusted with their control during the preceding administration. The armoury at Harper's Ferry having been destroyed to prevent its possession and use by the rebels, the Government was compelled to rely upon the single armoury at Springfield, and upon private establishments, for a supply of arms. . . . After having made contracts for arms with the private establishments in this country, it was deemed necessary by the President to insure a speedy and ample supply, to send a special agent to Europe with funds to the amount of 2,000,000 dol. to purchase more. I am gratified to state that he has made arrangements for a large number of arms, part of which have already been delivered. The remainder will be shipped by successive steamers until all shall have been received."*

A Commission was appointed by the Government of the United States, in March 1862, to audit the contracts made by the War Department for ordnance, arms, and ammunition, and in their report, which was laid before Congress, the following remarks occur on the steps taken to purchase arms abroad:—

"First, as to foreign arms; it was of course absolutely necessary to resort to these in equipping within a few months more than 500,000 men, and it was impossible in all the workshops of Europe to have had arms manufactured as rapidly as our public necessities required. Under such circumstances prices naturally rose, and inferior (often second-hand) arms had to some extent to be purchased. But these difficulties were greatly aggravated by the lack of system which prevailed. The States and the General Government entered the market together as rival purchasers, and thus the members of the same national family bid directly against each other. The folly of this is the more remarkable when it is remembered that these arms bought by the States were, in fact, for the use of the general Government and will no doubt, in the end, be paid for by it. The general Government itself employed numerous agents not acting in unison, and often becoming, therefore, competitors of each other. A few of these made purchases directly for the Government; the greater number sprang up in the shape of 'middle-men,' to whom, though not dealers in arms nor skilled in their value, contracts were awarded upon their own terms, only to be sub-let to the actual importers. . . . . In regard to a considerable portion of these foreign arms, Government inspection was permitted in Europe before shipment, but so utterly inadequate and so incompetent was the force assigned to this duty that it became a mere empty form devoid of all utility or protection. Of this and other negligences and imprudences the practical result has been that a large proportion of our troops were armed with guns of a very inferior quality: that tens of thousands of the refuse arms of Europe are at this moment in our arsenals, and thousands more still to arrive."†

Lord Lyons wrote to Lord Russell on the 4th of May, 1861:—"Mr. Seward said to me on the 1st instant that perhaps he ought to have told me before that the United States' Government had sent agents to England to purchase arms. He added that the agents would go on to France for the same purpose."*

It will be seen that, in the report of Captain Huse, who is stated to have been the Confederate agent sent to Europe for a similar purpose, he mentions the United States' agents and the agents of individual Northern States, as his most formidable competitors. "Their orders," he says "appear to have been unlimited, both as regards price and

* Appendix to British Case, vol. vi, p. 151.

† Ibid., p. 164.

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quantity, and they paid cash in every instance."* Further on he mentions that "the United States' agent, in this case the Minister, Mr. Dayton, has purchased, within a few days, 30,000 old flint lock muskets, which are to be altered before they are sent to the United States."

Arms and military supplies purchased by the United States.

The purchases of small arms and other military stores in England were partly made by authorized agents acting under the direct orders of the Government of the United States, partly by agents acting under the orders of the Governors of particulars States, and partly by mercantile firms, acting, however, in some cases under the authority of the Federal or States' Government.

Colonel Thomas, of the United States' Army, was in England during the war, and acknowledged that he had come over to superintend the purchases of military stores. He sought and obtained much information on this subject at the Government establishment at Pimlico. It appears, however, that the agent mentioned in the Report of the Secretary of War was a Colonel G. L. Schuyler. He was, in July 1861, appointed by the President of the United States "a duly authorized agent to purchase arms in Europe for the War Department." He received his instructions from the Secretary of War with a Memorandum from General J. W. Ripley, of the Ordnance Department at Washington, specifying the arms to be purchased, viz., 100,000 rifle muskets with bayonets, 10,000 cavalry carbines, 10,000 revolvers, and 20,000 sabres.† The financial arrangements for these purchases were to be made by the Secretary to the Treasury with Messrs. Baring, financial agents for the United States in London, and a credit of 2,000,000 dollars was, as has been seen, appropriated for the purpose. The money was placed at the order of Colonel Schuyler and the United States' Ministers in France and Belgium.† The arms were to be consigned to the care of Mr. Hiram Barney, collector, of the port of New York. Colonel Schuyler proceeded to Birmingham, where, as appears from a Report subsequently made by him in April 1862 to the Secretary of War, he purchased of the Small Arms Association 13,129 long Enfield rifles, and 1,880 short Enfield rifles with sabre bayonets, in all 15,000, all of which arrived safely in the United States, consigned as directed in his instructions. He also made arrangements there with the American house of Van Wart, Son, and Co., who had zealously co-operated with him to procure arms for delivery early in January, and who, between May 1861 and February 15, 1862, ordered from the Birmingham Small Arms Company and forwarded to Messrs. Baring and Messrs. George Wright, and Co., at Liverpool, for shipment to the United States, an aggregate amount of 26,540 rifles. From England he proceeded to the Continent of Europe, where he continued his purchases; and in a letter from the War Department at Washington to General Ripley, of the 18th November, 1861, information is said to have been received from him, that the steamer City of Washington would leave Liverpool on the 6th November, having on board 12,955 Enfield rifles from Dresden, 500 sabres, 800 revolvers, one case of bullet moulds. The steamer Saxonia, leaving Southampton on the 6th, was to bring 7,000 cavalry carbines and 500 sabres; the steamer Fulton (November 12) 20,000 percussion rifles; the steamer leaving Hamburgh on the 17th of November, 30,000 more.‡

The War Department had written repeatedly and pressingly to Colonel Schuyler on the subject of his mission. On the 2nd of September the Secretary wrote, "We need arms, secure them at any reasonable price and forward without delay."§ Again on the 16th, "I trust that nothing will delay a prompt delivery of the arms which you have purchased. You will please express my acknowledgments to Messrs. Baring, Brothers, and Co., for their prompt and patriotic action in facilitating your operations."§ On the 8th of October, "I notice with much regret that there are no guns sent. . . . . Prompt and early shipments of guns are desirable. We hope to hear by next steamer that you have shipped from 80,000 to 100,000." And, on the 21st of October, "the Department earnestly hopes to receive by the Arago the 12,000 Enfield rifles, and the remainder of the 27,000, which you state you have purchased, by the earliest steamer following. . . . . Could you appreciate the circumstances by which we are surrounded, you would readily understand the urgent necessity there is for the immediate delivery of all the arms you are authorized to purchase."‖

In the summer or autumn of 1861, Mr. J. R. Schuyler and Mr. Tomes, of the firm of Schuyler, Hartley and Graham, of New York, visited Birmingham, and, after communicating with the principal rifle, bayonet, and sword manufacturers there, gave orders for as many of those articles as their respective manufactories were capable of supplying,

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* Appendix to Case of United States, vol. vi, p. 34. † Appendix to British Case, vol. vi, p. 153.
‡ Ibid., p. 162. § Ibid., p. 154. ‖ Ibid., p. 155.

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the goods to be paid for on delivery to them at a place to be subsequently named, or on shipment. Messrs. Schuyler and Tomes made no concealment of the fact that these arms were destined for the American Government, and they intimated their intention of continuing unlimited orders for a period of two years. They took warehouses in Birmingham for the receipt of the arms when completed, and shipped them through the agency of Messrs. Baring Brothers and Messrs. Brown, Shipley, and Co., of Liverpool. It appears from the Returns made to Congress of arms purchased by the United States' War Department up to December 1861 that 8,650 rifles and 232 revolvers of English manufacture had at that time been supplied by Messrs. Schuyler, Hartley, and Graham; but Mr. Schuyler is also believed to have acted as agent for the purchase of arms for the State of New York. Messrs. Schuyler and Tomes were soon followed to Birmingham by a Mr. Lockwood, of New York, who had entered into a contract for the supply of rifles, bayonets, and swords to the War Department at Washington. He also gave unlimited orders for such articles, acting, however, to some extent in concert with Messrs. Schuyler and Tomes, and shipping the goods through the agency of the same houses at Liverpool. The effect of these orders was to raise the prices in the Birmingham gun-trade to the extent of 20 per cent.; indeed, the price of rifles rose from 52*s.* to 75*s.* each.*

On the 4th December, 1861, it was deemed expedient, under circumstances then existing, as a temporary measure of precaution to prohibit altogether, by Proclamation, the exportation of arms and munitions of war, and Messrs. Schuyler and Tomes countermanded their orders in consequence, the former proceeding to Liege, the latter remaining at Birmingham. The Proclamation was practically revoked in the course of January, and formally on the 7th of February, 1862. Whilst it was in force, it, of course, operated equally against both belligerents.

It appears from the Report of the Commission on Contracts for Arms that, by the concurrent action of the Secretary of State, Assistant Secretary of War, and Secretary of the Treasury, M. Laumont Du Pont, of the firm of E. J. Du Pont and Co., of Wilmington, Delaware, had twice visited England, furnished with a credit of 82,800*l.* 7*s.* 1*d.* upon Messrs. Baring Brothers, and purchased and shipped saltpetre at a cost of 79,699*l.* 16*s.* 8*d.*† The large purchases of saltpetre which were made towards the close of November 1861, drained the whole English market, and it was thought prudent to issue a Proclamation prohibiting the exportation of that article, which was subsequently revoked at the same time as that respecting the export of arms. Mr. Adams wrote to Mr. Seward on the 24th of January, 1862,—"The only event of any importance connected with American affairs that has happened during the last week is the revocation of the orders prohibiting the exportation of arms and munitions of war. This will release the large quantity of saltpetre in the hands of parties here, and will probably renew the activity of the Confederate emissaries in forwarding supplies to the insurgents."‡ Mr. Seward replied, on the 13th of February—"It affords us pleasure to know that the inhibition against the exportation of saltpetre, which was so unnecessary, has been rescinded."§

Mr. F. B. Crowninshield is understood to have acted as agent for the States of Massachusetts and Ohio. His address in London was at the office of the United States Consulate, No. 67, Gracechurch Street. The Birmingham Small Arms Company forwarded by his order 16,400 rifles to the care of Messrs. Baring Brothers, at Liverpool, for shipment to the United States, between the months of May and December 1861. Mr. Crowninshield also ordered large quantities of arms, and 10,000 sets of military accoutrements from firms in London, which were forwarded and shipped from Liverpool and Southampton.‖

Besides these purchases many were made by private firms, who sold or contracted to supply arms to the Government of the United States.

On the 14th of January, 1862, Mr. Donald McCay wrote to Earl Russell, stating that he had lately come to England with the intention of purchasing marine steam engines and iron armour plates for men-of-war ships, but that the manufacturers who could furnish them objected to enter into any contract on account of the possible risks in shipping these articles. He enquired whether Her Majesty's Government would allow the shipment of them to the United States. Messrs. James Jack and Co., a manufacturing firm of Liverpool, wrote, on the 16th of the same month, stating that they were offered orders on behalf of the Government of the United States for the construction of gun-boat towers and armour plates, and asking whether it would be considered improper for them, as British subjects, to undertake the execution of these works at the time. Both applicants were informed that there was not any impediment to their undertaking such works or shipments.¶

The Liverpool, New York, and Philadelphia Steamship Company addressed Lord Russell

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* Appendix to British Case, vol. vi, p. 158.
† Ibid., p. 173.
‡ Appendix to United States' Case, vol. i, p. 521.
§ Ibid., p. 523.
‖ Appendix to British Case, vol. vi, pp. 182, 189-191, 197.
¶ Ibid., pp. 159, 160.

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on the 31st of January, on the question of the exportation of arms to the United States. They said that, on the issue of the Queen's Proclamation of the 13th May, 1861, they had given notice to all their shippers that they could not carry contraband of war. They had subsequently been asked to carry forward the cargo of the steamer Bremen, built in England, but sailing under the Bremen flag, and a competitor with them in the Atlantic trade, which they had engaged to do, but finding on the arrival of the cargo at Hull, *en route* for Liverpool, that it comprised about 600 cases of rifles, they refused to carry them. A somewhat similar case had occurred with goods from Antwerp. On their refusing to carry these goods they had received information from the Continent that, if they would not do it, the goods would be sent to London, and thence by railway to Southampton, whence there was no difficulty in shipping them by the Hamburgh Company's steamers (built in England, but sailed under the Hamburgh flag), and they had reason to believe that this course had been regularly adopted, and that the arms they had refused to carry the day before were being shipped that day by another British steam conveyance from Liverpool. They found that their own refusal had tended to prejudice them with their customers, and particularly with the United States' Government, who had transferred the mail service from them to the German Companies. The reply to the Company, dated the 12th of February, merely referred them to the *Gazette* of the 7th of that month, whereby the temporary prohibition of the export of munitions of war had been formally removed.*

A statement made by Lord Russell to Mr. Adams, and the reply of the latter, are recorded in a despatch to Lord Lyons of the 19th December, 1861, as follows:—

"In regard to the export of arms and ammunition to the Confederate States, I had lately read the opinion of the Attorney-General,† and believed it was in entire conformity with the provisions of the Foreign Enlistment Act: warlike equipment of a vessel was prohibited; the loading of a vessel with arms and ammunition was not prohibited. But in point of fact a much greater amount of arms and ammunition had been sent to the Federal States, where there was no obstacle to the export or the import than to the ports of the Confederate States, which were blockaded. Mr. Adams admitted this to be the fact, and said he had refrained from pressing a more rigorous compliance with the Foreign Enlistment Act for this reason."‡

Lord Russell returned to the subject in a conversation which was reported by Mr. Adams to Mr. Seward on the 22nd May, 1862.§ Mr. Adams, in compliance with instructions from his Government, had pressed on Lord Russell the expediency of revoking the recognition of the belligerent status of the Confederate Government, and had mentioned, in connection with this subject, the irritation produced in the United States by the reports of supplies furnished by private persons in England to the Confederates. Lord Russell said "that large supplies of similar materials had been obtained in England on the part of the United States, which had been freely transported and effectively used against the insurgents." "I answered," said Mr. Adams, "by admitting that at one time a quantity of arms and military stores had been purchased here as a purely commercial transaction, for the use of the Federal army, but that I had early objected to this practice for the reason that it prevented me from pressing my remonstrances against a very different class of operations carried on by friends and sympathisers with the rebels in this island, and it had been discontinued. We had, indeed, purchased largely in Austria, but that Government had never given any countenance to the insurgents." Lord Russell's views are given in a Note to Mr. Adams of the 17th May, inclosed in this despatch.

It may be observed that the agents of the Confederate Government, if the correspondence presented by the United States is to be believed, had themselves at this time been drawing supplies from Austria, and that Major Huse had been endeavouring to ship ten batteries of Austrian field guns at Hamburgh, and was about to invest in 20,000 Austrian rifles then in the Vienna Arsenal.‖

Mr. Adams was, however, mistaken in supposing that the practice of buying arms in England for the United States' Government had been discontinued.

Messrs. Naylor, Vickers, and Co., of New York, Liverpool, and London, bought and shipped to the United States large quantities of small arms. They were supplied from Birmingham alone with 156,000 rifles between June 1862 and July 1863. They acted very extensively as agents of the United States' Government, and submitted to that Government large proposals from the Birmingham Small Arms Company. The Assistant Secretary of War at Washington, in a letter addressed to them on the 20th October, 1862,

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* Appendix to British Case, vol. vi, pp. 160-162.

† This was, no doubt, in the case of the Bermuda. See Appendix to British Case, vol. ii, p. 138.

‡ Appendix to British Case, vol. vi, p. 159.

§ Appendix to Case of United States, vol. i, p. 536.

‖ See Appendix to Case of United States, vol. i, p. 539; vol. vi, p. 69.

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directly sanctioned an arrangement for the supply of 100,000 rifles, and the acceptance of this order was duly notified to the Secretary of War by a letter from Birmingham, dated November 4, 1862. The arms were sent to Liverpool for shipment. In December 1863, fifty 68-pounder guns were proved at the Royal Arsenal at Woolwich, at the request of Messrs. T. and C. Hood, and after proof taken away by Messrs. Naylor and Co., and shipped to New York. Mr. Marcellus Hartley, of the firm of Schuyler, Hartley, and Graham, already mentioned, was also a large purchaser of small arms in London during the latter half of the year 1862.*

Arms and military supplies purchased by the United States.

The general results of these operations may be traced in the official returns of exports from Great Britain to the northern ports of the United States, published by the Board of Trade.

These show that, whereas the average yearly exports of small arms to those ports for the years 1858, 1859, and 1860, were 18,329, they rose, in 1861, to 44,904; in 1862, to 343,304; and amounted, in 1863, to 124,928. These are the recorded shipments of small arms; but there is reason to believe that other shipments, to a considerable extent, were made, under the denomination of hardware. Of exports of parts of arms, there is no record prior to 1862. In that year they were valued at 21,050*l.*; in 1863, they rose to 61,589*l.*; in 1864, they still amounted to 10,616*l.*; and the average for subsequent years has sunk to 4,249*l.*

Of percussion caps, the average export in the years 1858, 1859, and 1860, was 55,620,000; in 1863 it rose to 171,427,000; and, in 1864, was 102,587,000. Of cannon, and other ordnance, the exports in the year 1862, alone were valued at 82,920*l.*; while the aggregate value of the exports for the other nine years, from 1858 to 1861, and from 1863 to 1867, was but 3,336*l.*

The exports of saltpetre for the years 1858 to 1861, had averaged 248 tons yearly. The purchases for the United States' Government raised the amount to 3,189 tons for the year 1862 alone. From 1863 to 1867, the yearly average has again sunk to 128 tons. In addition to the exports from England, there was shipped from India direct to the northern ports of America, a total of 39,846 tons, between the years 1860 and 1866, both inclusive.

The amount of lead shipped, which had averaged 2,810 tons yearly, rose in 1862 and 1864, to 13,148 and 11,786 tons respectively.

The exports of ready-made clothing, apparel, &c., also rose in 1863 and 1864, to double the average amount, in consequence, as may legitimately be presumed, of the supplies required for the United States' army.

It is estimated that the extra supplies of warlike stores thus exported to the northern ports of the United States during the Civil War, represent a value of not less than 2,000,000*l.*, of which 1,500,000*l.* was the value of muskets and rifles alone.

On referring to the published statistics of imports into the United States, a similar increase will be observed. The value of arms imported from England into the United States, is there given for the years ending June 30, 1860, and 1861, at $281,998, and $257,055 respectively. In the succeeding year the imports of arms amounted to an estimated value of $1,112,098; in the year ending June 30, 1863, to $717,409; and in that ending June 30, 1864, to $109,887. But, in addition to these entries, there is a Table given in the returns of duty-free imports, under the heading of "Articles of all kinds for the use of the United States." During the two years ending June 30, 1860, and 1861, no such articles were returned as imported from England; but in the years ending June 30, 1862 and 1863, amounts of $3,316,492 and $6,778,856 are entered under this heading; and in the two succeeding years the articles thus imported from Great Britain still reached the estimated value of $1,568,407 and $1,853,773 respectively. That a large proportion, if not the whole, of these imports consisted of materials for the supply of the military forces of the United States, cannot admit of a doubt.†

We see then that, during the civil war, arms and military supplies of all kinds in very large quantities were purchased in England, France, Austria, and other neutral countries by the Government of the United States; that they must have exceeded in amount any supplies which could reach the Confederate States; that these purchases were of the most pressing necessity, especially during the earlier years of the war; that they were effected by agents employed by that Government, some of whom were officers in its military service; that arrangements were made for the regular shipment from England to the United States of the goods so purchased from time to time; and that the goods purchased in England were paid for through the financial agents of the American Government in England. In the sense, therefore, in which these expressions are used by the

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* Appendix to British Case, vol. vi, pp. 188-193.

† See Returns, ibid., pp. 200-202.

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Government of the United States in its Case, that Government had in England during the war a branch of its War Department and a branch of its Treasury—that is, persons employed by the War Department in selecting, ordering, and procuring arms and military supplies, and causing them to be shipped to America, and financial agents of the Treasury through whom its payments were made, and who were provided by it with funds for that purpose. In the sense in which Great Britain is said to have become the arsenal and treasury of the Confederate States, she became the arsenal and treasury of the United States. Had the Confederacy and its agents filled, in the foregoing transactions, the parts actually sustained by the United States and their agents, we should have a narrative differing in no material respect from the story of Confederate purchases and shipments told in the American Case.

Arms and military supplies purchased by the Confederate States.

Arms and Military Supplies purchased by the Confederate States.

The Government of the United States has not furnished the Arbitrators with an account of the names and operations of the agents employed by it for the above-mentioned purposes during the war; and it has, therefore, been necessary to supply that omission, although the means of doing so possessed by Her Majesty's Government are very imperfect. Of the operations of the persons employed by the other belligerent, the Government of the United States has, on the other hand, given a very long and circumstantial history, purporting to be drawn from the papers which came into its possession at the end of the war. It is not, and indeed it could not, be pretended, that the correspondence extracted from these papers was in any way known to the British Government. Nor has the Government of the United States furnished the Arbitrators with any means of judging whether the letters are authentic, or the facts stated in them true, or the persons whose names purport to be attached to them (persons entirely unknown to the British Government) worthy of credit. Her Majesty's Government thinks it right to say that it attaches very little credit to them.

There is, however, no reason to doubt that the Confederate Government, during the whole course of the war, effected purchases of arms and munitions of war to a considerable amount through its agents in England, France, Austria, and elsewhere. And it is now well known that, as its financial agents for this and other purposes, it employed the mercantile house of Fraser, Trenholm, and Co., which was established at Liverpool in connection with a firm at Charleston. The circumstance is stated as follows in the Case of the United States:—"Before or about the time the insurrection broke out, and, as the United States believe, in anticipation of it, this house (the Charleston house of John Fraser and Co.,) established a branch in Liverpool, under the name of Fraser, Trenholm, and Co. Prioleau was dispatched thither to take charge of the Liverpool business, and became, for purposes that may easily be imagined, a naturalized British subject."* Her Majesty's Government finds, on inquiry, that Prioleau in fact settled himself as a merchant in Liverpool in 1854, and remained in England, except during a temporary absence of a few months, from that time till June 1863, when he applied for naturalization, stating in his application that he had been a resident householder for eight years, had married an English wife, and was desirous of acquiring landed property in England, and residing there permanently.† What further motives for this step a fertile imagination might discover, Her Majesty's Government cannot say. The advantages conferred at that time by naturalization in England were the legal capacity to hold immovable property, and to register vessels as a British owner. None of the vessels, however, to which this inquiry relates were registered in the name of Prioleau nor in that of his firm. In truth, all of them, except the Shenandoah, with which the firm appears to have had nothing to do, had sailed long before Prioleau became a British subject. The motives stated in the application were probably the real ones, since the applicant appears to have continued to reside in England.

Case of the United States, p. 59.

It would be a waste of time to follow the Government of the United States into the details of the various shipments made from England on Confederate account. Both belligerents were left free to purchase and ship munitions of war, and both availed themselves of that liberty. The suggestion that such transactions were in progress called for no inquiry on the part of the British Government, and the transactions themselves, had they been known to it, would have called for no interference.

The same observation applies to the expedients for raising money which were adopted during the later years of the war. The Confederate States, being debarred by the blockade from exporting their produce to Europe, endeavoured to procure funds in England, France, and elsewhere, by hypothecating stocks of cotton, stored for exportation, and to be

* Case of the United States, p. 220.

† Appendix to British Case, vol. v, p. 202.

delivered after the conclusion of the war. The agent employed in England for this purpose was a merchant resident at Liverpool. Other agents were employed in Paris. No action or suit at law founded on transactions of this kind could have been sustained in England, either by or against the Confederate Government; since it had not been recognized by Great Britain. But it was not the duty, nor was it within the legal power, of the British Government to prohibit or prevent them, as it could not have prevented its subjects from subscribing to the vast war loans which were raised from time to time by the Government of the United States, and were largely held in Europe. Those who advanced their money to the Confederate States did so at the risk of losing it, if the Confederacy should be overthrown, and they have lost it accordingly.*

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Arms and military supplies purchased by the Confederate States.

Pressed by the difficulty of distinguishing between their own operations in Europe and those of the Confederate States in such a manner as to make it appear that the British Government was bound to give free scope to the former and repress the latter, the United States appear to imagine that they have found such a distinction in two circumstances. One of these is, that the needs of the Confederacy were, as they allege, more urgent than those of the Union: the former could only obtain their military supplies from abroad; the latter could manufacture some of theirs at home.† The other is, that the United States, having the command of the sea, could transport the goods purchased by them freely and openly, or (as it is expressed) "in the ordinary course of commerce;" whilst the Confederates were obliged to "originate a commerce for the purpose"—that is, to get their goods transported by way of Nassau and Bermuda, which are commonly places of no great trade—and further to make use of those concealments by which the traffic in contraband of war, when not protected by a powerful navy, usually tries to elude the vigilance of the enemy's cruisers.

Case of the United States, pp. 84, 85.

Are we then to understand that, according to the views put forward in the Case of the United States, the "strict and impartial neutrality towards both belligerents," which it is the duty of a neutral Government to maintain, obliges it to find out which of the two stands in the greater need of supplies, and consists in lending aid, by measures of repression, to the belligerent whose force is the greater and his wants the less pressing of the two, and thus assisting him to crush more speedily the resistance of his weaker enemy? Her Majesty's Government is unable to assent to this novel opinion, advantageous as it would doubtless prove to States which, like Great Britain, possess a powerful navy. To hold an even hand between the two; to leave the trade open to both equally, or close it to both alike; to leave the stronger free to profit by his strength, and the weaker to elude, as best he may, the superiority of his enemy on the high seas, has commonly been regarded as the only course consistent with impartial neutrality, and this was the course steadily pursued by Great Britain.

The transportation of military supplies was equally a contraband commerce, whether carried on openly or covertly, from Liverpool or London or from Nassau. It is asserted by the United States that the contraband trade between England and Nassau was "covered by the British flag," and that this, coupled with the protection afforded by Her Majesty's Government to the Confederate agents in England, "deprived the United States of the benefit of their superiority at sea."‡ Her Majesty's Government does not understand the United States as alleging either that any protection was afforded to the agents of the Confederate States in England which was not extended also to those of the United States, or that contraband trade under the British flag was protected against search and capture at sea. Both of these assertions would be unfounded; but the language employed is calculated to produce this erroneous impression on the minds of the Arbitrators. The agents of both parties in Great Britain enjoyed alike that protection, and no more, which persons resident or commorant here derive from the laws under which they live. Ships carrying between Liverpool or London and Nassau military supplies destined for the Confederate States were not, in fact, protected by the British flag, but were left to be dealt with on the principles of international law, as administered in the Prize Courts of the United States, equally with those bound directly for Confederate ports. Her Majesty's Government, with a powerful navy at its command, abstained from all interference, confining itself to a remonstrance, conveyed in very moderate terms, when there appeared reason to apprehend that

Ibid., p. 85.

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* The principle is clearly stated by Heffter, Section 148, in the passage cited below (Annex A).

It has been fully recognized by the United States. The following extract from a note of Mr. Webster's was cited and adopted by Mr. Seward in answering a complaint of the Mexican Minister in 1862:—

"As to advances, loans, or donations of money to the Government of Texas, or its citizens, the Mexican Government hardly needs to be informed that there is nothing unlawful in this so long as Texas is at peace with the United States, and that these are things which no Government undertakes to restrain."—Appendix to Case of United States, Vol. I, p. 589.

† Case of the United States, pp. 310-312.

‡ Ibid., p. 312.

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the United States' cruizers, in their eagerness to make prizes, might harass unduly the regular and legitimate commerce of Great Britain.

Blockade running and the Nassau trade.

Blockade-running and the Nassau Trade.

The sea-coast of the Southern States being blockaded, though the blockade was for a long time imperfect, importers of goods into those States were exposed, if the goods were contraband, to a double risk of capture, which increased or diminished according to the length of the voyage. The island of New Providence, from its comparative nearness to the blockaded coast, offered some special facilities for the traffic, and large quantities of goods were sent to it as the war went on, with a view either to their being sold in the island to customers buying for the Southern market, or to their being forwarded direct to one or other of the blockaded ports. Havana and Cardenas, in the Spanish island of Cuba, were made use of for a like purpose, and a Confederate agent is stated to have been resident there. In this there was nothing which the British Government was bound or legally empowered to prohibit, nor was any such obligation incumbent on the Government of Spain. Persons trading either with the Southern States or with those which adhered to the Union were free to use Nassau, as they were free to use any other port in the British dominions convenient for their purpose. Traffic of the former kind was difficult and precarious, while that of the latter kind was safe and easy, and could be carried on from Liverpool or Halifax with more convenience and security than from Bermuda or Nassau. But this difference imposed no special obligations on the British Government in regard to either the one or the other.

One tangible ground of complaint the United States believe themselves to have discovered in the circumstance that merchant-ships arriving at Nassau were able to break bulk there, and trans-ship their cargoes without a *bonâ fide* importation into the Colony. It is represented that this became a constant practice with vessels transporting goods for the Confederates; and the Government of the United States "asks the Tribunal to find" that the permission to do it "was a violation of the duties of a neutral." That the Tribunal is invested with no authority to decide this question either in favour of the United States or against them, it is needless to say.

It is asserted by the United States that the permission was given (or, in other words, that a previously existing prohibition of trans-shipment within the limits of the Colony was removed) by an act of the Colonial Government. In proof of this it relies upon an intercepted letter, purporting to be written by a Confederate Agent. That it was an indulgence granted, exclusively or especially, to vessels trading with the Confederate States, is not asserted; though, under the circumstances of the case, it might be expected to work principally in their favour.

No information of such an act on the part of the authorities of the Colony ever reached Her Majesty's Government. It was not complained of at the time either by the Consul at Nassau or by the Minister of the United States in London, although the fact that trans-shipments were taking place was at a later period mentioned as a grievance. From the general character of Mr. Whiting's correspondence, and from his activity in discovering injuries and affronts even where none existed, there can be no doubt that, had the permission been given, and had it possessed the importance which the United States now attributes to it, he would instantly have made it a matter of expostulation and complaint, and it would have been promptly brought to the notice of Her Majesty's Government by Mr. Adams. But even the Government of the United States itself, which was in constant correspondence with Mr. Whiting, appears to have known nothing about the matter, and now produces, in support of a complaint which it regards as serious enough to demand a judgment from the Tribunal, no evidence beyond a loosely-worded sentence occurring in a letter purporting to be written by a Confederate Agent; whilst of this letter, and the time at which it came into the possession of the United States, no better account is given than that it is one of a large number "captured at the taking of Richmond and at other times."

Her Majesty's Government has now ascertained on inquiry that the statement is erroneous. The fiscal regulations of the Colony prohibited the trans-shipment of goods within its limits unless the goods were landed for examination by the officers of Customs. Goods so landed might be immediately reshipped from the same wharf for exportation in the same vessel, or in others, at the choice of the shipper. The prohibition (which existed only for fiscal purposes) might, in any case, be dispensed with by permission granted by the Receiver-General. This permission had been customarily granted as a matter of course in the case of goods stated to be in transit, and it was accorded frequently during the war. The first application was made on the 19th December, 1861, in the case of the

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Eliza Bonsell,* a vessel laden, not with contraband of war, but with an assorted cargo; and, after a reference to the Governor and Council, it was granted, the Receiver being satisfied that the goods could be examined on board as well as if they had been placed on the wharf.* No permission appears to have been granted in the case of the Gladiator, nor does it appear whether her cargo was or was not landed before exportation. The prohibition was not removed or modified, and no change was made in the regulations. Had it been removed, however, the fact would have had no importance, since there was nothing to prevent cargoes landed from being immediately reshipped and distributed into smaller vessels; and the authorities were not at Nassau, any more than at Liverpool, authorized to prevent the exportation or transit of articles contraband of war.

That cargoes were, in fact, frequently trans-shipped, either with or without an intermediate landing, Her Majesty's Government has no doubt, though the statements made in the Case of the United States are in many instances not borne out, when compared with the documents produced in proof of them.† The Government of the United States has, however, omitted to inform the Arbitrators of the means which were adopted by itself, as a belligerent Power, to extinguish the traffic with the South, of which it complains. These means consisted in a rigorous extension of the belligerent right to capture neutral vessels on the high seas for the conveyance of contraband and for intended breaches of blockade, an extension previously unknown to International Law. Before this war, it had been commonly assumed that, where a neutral vessel was bound from one neutral port to another, a Prize Court would not inquire into the destination of the cargo. The American Courts introduced the principle that, if sufficient evidence could be discovered (and the evidence deemed sufficient was often very slight), of an intention that the cargo should ultimately be delivered at a port of the belligerent, the cargo, and in some cases the ship also, became liable to condemnation. Goods, therefore, on the voyage between a British port and Nassau, were equally liable to capture with goods on a direct voyage from Nassau itself or from Liverpool to a southern port, if the Prize Court had any reason to suppose that to a southern port they were intended ultimately to go, and not to the Nassau market for *bonâ fide* sale there. And the ship shared the fate of the cargo, unless there were reason to believe that the owners were ignorant of the ulterior destination of the latter, and had not hired their vessel with a view to it. These decisions, to which no opposition was offered on the part

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* Appendix to British Case, vol. v, p. 30.

† To avoid this risk, it is said (p. 223) "it was resolved to send the purchases which might be made in England to Nassau in British bottoms, and there trans-ship them into steamers of light draught and great speed, to be constructed for the purpose. . . . The first order from Richmond that is known to have been given for such a shipment is dated the 22nd July, 1861." Page 60.

* The passages referred to as authorities do not show any such system. The letter from Walker to Huse and Anderson, of July 22, 1861, suggests that a number of small vessels should be secured under British colours and with British clearance, laden with arms and convoyed by the armed vessel MacRae, which had been placed by the Secretary of the Navy at the disposal of the War Department and was to be sent to England for the purpose. The vessels might make the port of Nassau or some other port equally favourably situated, whence they might clear with probable safety for the coast of Honduras or of Yucatan, and enter upon the coast either of Florida or Louisiana. Nothing is said of trans-shipment at Nassau. The Gladiator, which was the first vessel that arrived at Nassau with contraband of war on board for the Confederate States (December 9, 1861), had originally orders not to land her cargo. It was not until after she arrived at Nassau that it was decided to distribute it into smaller vessels. (See Appendix to Case of the United States, vol. vi, p. 56, where the idea of trans-shipment is spoken as a last resource, and Mr. Benjamin's order to Captain Maffit, p. 57, also Mr. Heyliger's letter, p. 58, which acknowledges the receipt of orders to trans-ship.)

The letter from Huse to Gorgas, March 15, 1862, ibid., p. 69, besides being long subsequent in date, does not speak of any regularly established plan for trans-shipment, although he remarks on the difficulty of uniting in one vessel the qualities necessary for crossing the ocean and for running the blockade. In consequence of this Major Huse is "quite at a loss what destination to give to the Bahama." The next shipment he means to send to Havana.

Huse (at Liverpool) was not directed to send the cargoes to Nassau, but to some port in Cuba, "to care of our agent Mr. Helm, and we can get them away with almost entire certainty by breaking bulk there." (Ibid., p. 68.)

The cargo of the Economist was not trans-shipped. (Ibid., p. 71.)

That of the Southwick was only trans-shipped on account of the amount of demurrage to be paid under her charter, while she was waiting for an opportunity to run the blockade. (Ibid., p. 73.)

As to the existence of "private ventures," it seems that most of the arms and supplies, mentioned in the correspondence in Vol. vi, were contracted for by the Confederate Government, but it by no means appears, nor is there reason to believe, that all the vessels loaded with them were chartered by Confederate agents. Isaac, Campbell, and Co., contracted to deliver the arms sent by the Columbia and Sylph to the Confederate States, and tried to get off their bargain. (Appendix to Case of the United States, Vol. vi, p. 88.) Part of the "Herald" again is mentioned as reserved for private cargo, p. 95.

The information possessed by the United States Government and communicated to Her Majesty's Government at the time, is given in Vol. i of the Appendix to the Case of the United States. Mr. Adams in December, 1862 communicated a letter from Mr. Morse, United States' Consul in London, giving an account of the system pursued. He says that, during the earlier part of the war, the trade was carried on by agents, but at that time by British merchants on their own account, in steamers chartered by them or freighted by private speculators.—(Vol. i, p. 731.)

Traffic in munitions of war.

False importance ascribed to the Proclamation of Neutrality.

of Her Majesty's Government, destroyed the advantage which the proximity of a neutral port offers to the blockade-runner, in diminishing his risk of capture by diminishing the length of his voyage. The only advantage which remained was that of transferring the cargoes, whether by means of a sale in the market or otherwise, to smaller vessels of lighter draught and greater speed, which could make their way into the blockaded ports, not however, as it appears, by means of the inland waters along the shore (which were chiefly used during the first year of the war) but by running past the blockading vessels. In truth, when the blockade of these ports became really effective, the value of a neutral port at the distance of a two days' voyage was lost to the blockade runner; it was valuable to him only as long as they were not effectually blockaded. To assist the blockade, however, was not the duty of the neutral Government.

False Importance ascribed to the Proclamation of Neutrality.

In the Case of the United States some special importance appears to be ascribed to the fact that the transport of contraband of war and breaches of blockade had been denounced as unlawful in that Proclamation of Neutrality to which the American Government takes so much exception. It can scarcely be necessary to expose so transparent an error. The Proclamation of Neutrality did not create, nor purport to create, any new prohibitions. In England the Sovereign cannot, by Proclamation, either enact laws or abrogate them; all that he can do is to make public the provisions of existing laws and enforce them in such a manner as may be necessary. The effect of this Proclamation was solely to warn British subjects that they would incur, by doing certain things, penalties imposed by the law of nations, against which their Government would not protect them, and, by doing certain other things, penalties imposed by the municipal law of Great Britain, which the Government would enforce against them. But Her Majesty neither did nor constitutionally could undertake, by issuing it, any international obligations towards either belligerent beyond such as are common to all neutral Powers. It has been the practice in the United States to issue Proclamations, different, perhaps, in phraseology, but in substance the same. In these, obedience to the law of nations is "enjoined;" the carriage of contraband and breaches of blockade are denounced as "misconduct," and warning is given that persons "so misconducting themselves" will do it at their peril. But the American Government does not appear to have understood that by these warnings it bound itself to prohibit or even to discountenance the acts thus denounced, or to interpret with any peculiar strictness its own neutral duties under the law of nations.*

Knowledge of Facts imputed to the British Government.

Knowledge of facts imputed to the British Government.

Case of the United States, p. 59.

It is not material to pursue the question how far either the transactions of the Confederate Government and its agents, or those of the Government of the United States and its agents, in relation to the purchase and transportation of arms and munitions of war, could have been known, by inquiry, to the Government of Great Britain. Had they been known to it, no obligation to prevent them would have arisen; no obligation, therefore, arose to prosecute inquiries respecting them. It is said† that the appointment of the Confederate agents, their acts, and the powers intrusted to them, were open and notorious, and that, "if there was any pretence of concealment at the outset, it was soon abandoned." But it appears from the very documents relied on that these agents took the greatest pains to keep all the details of their proceedings secret.‡ "The United States' Ministers to England, France, and Belgium," wrote one of them in July 1861, "have been very active in their endeavour to discover what the agents of the Confederacy are effecting. They have agents employed for no other purpose, and it is of the highest importance that these agents should be kept in ignorance of all the acts of any agent of the Confederacy. Any person that has ever become acquainted with Europe from personal experience knows how difficult it is for a stranger to keep his actions secret when spies are on his path." And, in March 1862, the same agent writes,§ "I beg to suggest to the Department the importance of everything relating to these shipments being kept in secret," adding, as before, that his "steps are narrowly watched by the agents of the United States." Her Majesty's Government did not resort, and it certainly was not bound to resort, to the

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* See President Washington's Proclamation in 1793 (Appendix to British Case, vol. v, p. 237), and Mr. Jefferson's subsequent letter, referred to above, p. 49, and President Grant's Proclamation issued at the commencement of the late war between France and Germany; Appendix to Case of United States, vol. vii, p. 43.

† Case of the United States, p. 221.

‡ Appendix to Case of United States, vol. vi, p. 34.

§ Ibid., p. 70.

means which are here stated (whether truly or not) to have been employed by Ministers of the United States; such knowledge as could be derived from secret information or intercepted letters it did not possess; and, in the unauthenticated statements which Mr. Adams, withholding the names of his informants, furnished from time to time to Earl Russell, it had no adequate ground for inquiry or action.

Knowledge of facts imputed to the British Government.

It may, however, be convenient, since the Government of the United States has charged Earl Russell with having neglected to make inquiry, and contented himself with announcing a "condition of affairs at Nassau" which was "imaginary,"* to state what was actually done by Earl Russell upon the receipt of Mr. Adams' representation, what had been previously done, and what were the facts existing at the time.

Case of the United States, p. 63.

The first despatches received by the Government from the Colony relating to vessels under the Confederate flag, or engaged in trade with the Confederate States, were dated the 21st of June and the 8th of August, 1861, and forwarded representations which the Administrator of the Bahamas had received from the United States' Consulate at Nassau, respecting the arrival at that port of merchant-vessels under the Confederate flag, and the refusal of the masters to deposit their papers at the Consulate. To these the Administrator had replied that the facts alleged did not justify any interference with the vessels. A despatch was also received from the Governor of Barbados, reporting the pretensions which had been advanced on the same subject by the United States' Consul there, and the course of conduct which the Governor meant to pursue. These despatches were referred to the Law Officers of the Crown, who reported that the Governor had, in their opinion, taken a correct view of his position and duty, and might be instructed that no foreign Consul had any jurisdiction or power to seize any vessel (under whatever flag) within British territorial waters. With respect to supplies, even of articles clearly contraband of war (such as arms or ammunition), to the vessels of either party, the Colonial authorities, in the opinion of the Law Officers, could not interfere, unless anything should be done in violation of the Foreign Enlistment Act; and, as regards the supply of articles *ancipitis usus* (such, for instance, as coal), there was no ground for any interference whatever. Instructions were sent in this sense to the Governors of the British West Indian Colonies on the 15th of November, 1861.†

On the 1st October, 1861, Mr. Adams addressed a note to Lord John Russell, forwarding a copy of an intercepted letter from a Mr. P. Baldwin, living at Richmond, Virginia,‡ "in the service of the insurgents," addressed to Mr. Adderley, of Nassau, from which he said that it appeared that Nassau had been made to some extent an entrepôt for the transmission of articles contraband of war from Great Britain to the ports held by the insurgents. It would be a great source of satisfaction to the Government of the United States, Mr. Adams said, to learn that Her Majesty's Government felt itself clothed with the necessary power to prevent the exportation of such contraband for the Colonies for the use of the insurgents, and that it would furnish the necessary instructions to the local authorities to attain that end. Mr. Baldwin's letter stated that the Secretary to the Navy of the Confederate States had ordered from England, to be shipped to Nassau, a quantity of arms and powder. Mr. Baldwin had recommended that they should be consigned to Mr. Adderley, asked him to take good care of them, said he would be with him soon, and would expect his aid in trans-shipping them. A copy of this communication was sent to the Colonial Office on the 8th of October, with a request that inquiry might be made, and Mr. Adams was so informed.

The reply of the Administrator of the Bahamas, dated the 20th November, 1861, was received at the Colonial Office on the 31st December, 1861. The Administrator forwarded a letter from Mr. Adderley expressing his surprise that the United States' Government should have countenanced the intercepting of his letter, and stating that no warlike stores had been consigned to him from Great Britain for transport to the Confederate States or to any other place. With this was inclosed a Report from the Receiver-General at Nassau, to the effect that no warlike stores had been received at that port, either from the United Kingdom or elsewhere, neither had any munitions of war been shipped from Nassau to the Confederate States. The substance of this information was conveyed to Mr. Adams in a note from Lord John Russell of the 8th of January, 1862.§ It was not, as stated in the Case of the United States, "the announcement of an imaginary condition of affairs," it was the simple truth at the time when the despatch was written. The first arrival in the port of Nassau of a vessel suspected of being loaded with arms and munitions of war for the Confederate States was on the 9th of December, 1861. The vessel in question was the Gladiator.‖

Ibid., p. 61.

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* Case of the United States, pp. 232, 234. † See Appendix to British Case, vol. ii, p. 89.
‡ Appendix to Case of the United States, vol. i, p. 520.
§ Ibid., vol. vi, p. 57; Appendix to British Case, vol. v, p. 26. ‖ Case of the United States, p. 226.

Part IV.

Traffic in munitions of war.

Knowledge of facts imputed to the British Government.

It was well known, undoubtedly, to the Colonial authorities and to Her Majesty's Government, that, during a considerable part of the time for which the war lasted, much traffic was carried on between England and the Islands of New Providence and Bermuda, and from thence to ports of the Confederate States; and the Colonial newspapers during that period contained a multitude of advertisements offering for public sale the cargoes of vessels arrived or expected to arrive from various English ports, from Havre, New York, and other places. Foreign goods of all kinds being shut out from the Confederate States by the blockade of an immense seaboard, it was inevitable that such a commerce should spring up, and should be busily carried on by speculators and adventurers,

It was known also, that some part of this trade consisted of arms and munitions of war. But these facts did not call for inquiry. It was not the duty of the British Government to inquire who were interested in particular cargoes, or by whom particular vessels were owned or chartered. A vessel owned, or chartered, or controlled, wholly or in part, by a belligerent Government, and employed in conveying merchandize from and to foreign ports, is liable to capture by the other belligerent as enemy's property or as employed in the enemy's service, but she is not a transport in the ordinary or proper sense of the word, even though part of the cargo may consist of articles contraband of war. To repress the trade so far as it was not a *bonâ fide* trade between neutral ports carried on in neutral ships was the business, not of Great Britain but of the United States; and they did repress it accordingly, by a strict and rigorous exercise of the belligerent rights of blockade, visit, search, and capture.

In truth, however, although it is several times implied, and once asserted, that the British Government had been repeatedly informed, and repeatedly furnished with evidence, that some of these vessels were the property of the Confederate Government, and ought to be regarded as "transports," no representation was ever made on this point till the month of January 1864, when some copies of letters taken from a prize were sent by Mr. Seward to Mr. Adams. Nor was this information furnished as a ground for legal proceedings. Mr. Seward only intimated that, with the knowledge thus acquired by his Government, "the policy pursued by the United States in regard to assaults of the blockade, would be modified."* It supplied, indeed, no evidence at all, except against two vessels which had been already captured. In fact, it was not known then, and it appears to be but imperfectly known even now, when the confidential papers and documents of the Confederate Government have fallen into the hands of the Government of the United States, what vessels the Confederate authorities had control over or interest in at different times, whether as owners, charterers, or freighters, and how far their control or interest was shared by private speculators.

The Case of the United States abounds throughout with assertions to the effect that Her Majesty's Government must or ought to have been aware of all, and more than all, that became known during the later period of the war, or is known now. What might possibly have been discovered by an incessant and indiscriminate use of every means by which secret information may be obtained, Her Majesty's Government cannot say; but a slight experience of administration, a very slender acquaintance with judicial records, is sufficient to convince any one that, in matters of this nature, secrecy or disguise, where there is any motive for securing it, is not difficult of attainment; and that a lurking and undisclosed interest in a ship, a cargo, a contract, a trading speculation, is a thing easy to conceal, and hard to detect. Such experience can hardly be quite unknown to the Government of the United States.

During the whole period of the Civil War, the sea was open to the United States, and they had access, in common with other nations at peace with Great Britain, to the workshops, markets, and seaports of this country. What military supplies they purchased here, how they paid for them, in what vessels and in what manner they transported them to America, were matters into which Her Majesty's Government never deemed itself bound to make inquisition. The complaint they make against Great Britain is really this, that the liberty allowed to them was allowed equally to the Confederate States.†

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* Appendix to Case of the United States, vol. i, pp. 741, 745.

† The subjoined extract from the "New York Times" of September 21, 1870, shows the course pursued during the recent war between France and Germany:—

"The steamer Lafayette, belonging to the Compagnie Transatlantique, sailed from this port for Havre, yesterday afternoon, having on board a very large amount of ordnance and ordnance stores, together with upward of 250 French and Irish recruits, fully equipped and prepared to volunteer in the French Provisional Army against Prussia. Previous to the departure of the vessel, Mr. Johannes Roesing, Consul for the North German States in this city, visited the United States' District-Attorney's office in Chamber Street and demanded the seizure of the Lafayette, on the ground that she was to be used to carry a military expedition against a country at peace with this Government. It was found that there did not exist sufficient legal cause for the detention of the steamer, and the German Consul then made a complaint against 133 of her passengers. He charged the latter, on information

1. *Restrictions on Coaling at Nassau.*

2. *Order of 31st January, 1862, in relation to Nassau.*

Her Majesty's Government will not advert in detail to some minor complaints and inaccuracies which occur in this part of the Case of the United States.

Two complaints, however, remain in connection with the matters referred to in the foregoing pages, which are treated as serious by the United States, though in the view of Her Majesty's Government they have nothing to do with the questions referred to the Tribunal.

One of these is founded on the regulation enforced by the Colonial authorities at Nassau, that a belligerent Government should not be suffered to store coal at that port for the use of its armed ships of war; the other, on the orders subsequently issued by Her Majesty's Government, whereby the ships of war and privateers of both belligerents were prohibited from entering the ports or waters of the Bahama Islands, unless by special leave of the Governor, or under stress of weather.

The circumstances under which the first of these two complaints arose are succinctly stated in Earl Russell's note to Mr. Adams of the 25th March, 1862.* It will be observed that two vessels arrived at Nassau laden with coal which had been shipped at Philadelphia by order of the United States' Navy Department; that the United States' Consul desired to store this coal for the use of ships of war under the flag of his Government resorting to the Colony; that this was objected to by the local authorities, and that the objection led to

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and belief, with being an armed and organized company, intended for warlike purposes against the Prussian States, in violation of the neutrality laws. His affidavit was prepared by Honourable A. H. Purdy, Assistant District-Attorney, and was sworn to before Commissioner Betts. The complainant was unable to furnish the names of the *émigrés*, including the leaders, and the warrants for their arrest were accordingly filled out with fictitious names.

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"After the German detectives announced their failure to recognize any of the expeditionary party, Mr. McKenzie took a passenger list and used it in expelling from the vessel all those whose names were not on it. Precisely eighty-three Frenchmen lost their passage in this manner. These were all bound for the French Army. Their passage tickets were to have been given to them by the French Committee of this city, but had not been purchased at the time of their expulsion. They were quite indignant on account of the agent's manœuvre, and were loath to leave the pier, trusting that they might get on board at the last moment. Among the passengers who were purchasers of tickets, and who remained on the Lafayette were the leaders of the volunteers, and over 250 *émigrés*, are destined for their native land. No attempt was made by the Deputy Marshals to interfere with arms and ammunition on the steamer, consisting of 120,000 rounds and several thousand Remington rifles. Mr. McKenzie was extremely dissatisfied with the action of the North German Consul, and intimated his intention of bringing the matter before the proper authorites. The last seen of the Lafayette was off the Battery, at which time she was fast steaming out to sea. It was confidently reported that she was joined in the Lower Bay by the French corvette Latouche Tooville, Captain Bassett, with four guns on board and a crew of eighty men.

"The Lafayette was to have sailed on Saturday last—her regular day—but was then detained by an order from the French Minister of War at Paris, who desired that she should carry out certain munitions of war and supplies, intended it is alleged, for the French army. Her mails were kept back until yesterday and then left with the vessel. The supplies, &c., consisted of Remington breech-loaders to the number of 6,000 cases—some persons say more—several million rounds of ammunition, a large number of revolvers and other small arms and a considerable quantity of provisions. She commenced taking in this portion of her cargo on Friday, and was engaged day and night to the hour of her departure, and even after she sailed a lighter arrived with cases of arms which came too late to be shipped.

"It is stated by some persons on the wharf, with one of whom our reporter conversed, that the cases have the marks of the ordnance officer at Governor's Island. It is not improbable that these arms were purchased of the United States' Government, as Mr. McKenzie, the agent of the line, informed our reporter, on Monday, that this Government were fully aware of the purchase and proposed shipment of these arms, and offered no objection."

The New York and Havre line of steamers, of which the Lafayette was one, held at the time a contract with the French Government for the carriage of the mails. In October 1870, a telegram was received at New York from M. Crémieux, a Member of the French Provisional Government, ordering that the steamers of this line should be held exclusively for freight to be forwarded on account of the Government. Under this order the packets continued to carry arms and munitions of war in large quanties from the United States to France. It appears, further, from the recent trial at Paris of M. Place, French Consul-General at New York, who was charged with the management of the purchase and shipment of these arms, that four vessels, the City of Buenos Ayres, Concordia, Riga, and Arcadia, were chartered and freighted with arms by Messrs. Remington and Sons for the French Government, and two others, the Erie and Ontario, by an agent of the French Consul-General for the same purpose, thus becoming "transports" in the sense in which the word is used in the Case of the United States. No objection was, however, raised to their sailing by the United States' Government. The New York Times of the 30th of March, 1871, gives the following statement of the supplies forwarded by these and other vessels:—

"The steam-ship St. Laurent sailed yesterday with her last consignment of arms and munitions of war for France. She carried among her cargo 1,676 cases of cartridges, 574 cases of harness, 1,444 cases of rifles, 205 cases of bayonets, and 67 cases of projectiles. The whole cargo was valued at 708,955·50 dollars. This makes nineteen cargoes of arms sent to Havre since the war began, the previous shipments being as follows:—

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* Appendix to Case of United States, vol. i, p. 346.

Part IV.

Various complaints of the United States against Great Britain.

Restriction on coaling at Nassau.

remonstrances on the part of the Consul and of the Commander of the United States' ship Flambeau, which arrived while the correspondence was proceeding. It was urged by the latter that both the United States' ship James Adger and the Confederate ship Nashville had been suffered to coal at Southampton, and that this was a precedent in favour of granting the facilities now asked at Nassau. It was pointed out in reply that the cases were not parallel. Those vessels were several thousand miles distant from their respective homes, and to them consequently coal was an article of real necessity, whereas the Flambeau was within a very short distance of the ports of her own nation—Key West, for instance, where all her necessities could readily have been supplied. In obtaining coal at Nassau, therefore, there could be no other object than that of enabling her to continue what was, in fact, to some extent, a blockade of the port.

The Commander of the Flambeau replied,* protesting against such a construction being placed on his presence, and declaring that he was strictly enjoined to respect the rights of neutrals.

It appears, however, from a letter addressed by the Governor to the British Commodore at Havana, dated December 12, 1861, that the Flambeau constantly kept her steam up ready for instant movement, and there was a report that she intended to cut out the Gladiator, or to seize that vessel immediately after leaving the port.† The Consul of the United States, in a despatch to his Government of the following day, stated that "the Captain of the Flambeau is watching intently the movements of these rebel steamers."‡ The Consul notices that "an English man-of-war has arrived, and several more are telegraphed as in sight," and he does not doubt that every protection will be afforded to the Gladiator, and every means afforded to facilitate her escape.

The Attorney-General of the Colony advised the Governor that, though it might be in accordance with the regulations issued by Her Majesty's Government to suffer coal to be supplied to an armed vessel of either belligerent, putting into port under ordinary circumstances, and desirous of obtaining a supply of coal in the ordinary mode by purchase in the market, such was not the case of the Flambeau, or of the coal in question. He therefore advised that the restrictions placed on the use of that coal should be continued, and that reference should be made to the Home Government for instructions.

The despatches reporting these facts were received at the Foreign Office from the Admiralty and Colonial Office on the 15th and 16th of January, 1862, and the question was at once referred to the Law Officers of the Crown. Their opinion was that the Governor had acted properly in refusing to allow the proposed coal depôt to be formed at Nassau. The formation or permission of such a depôt for a purpose so directly connected with belligerent operations would be inconsistent with the neutrality of Great Britain.§

One of the vessels laden with coal appears to have been sent back at once by the United States' Consul. The other, the Caleb Stetson, remained in the harbour with the coal on board, and does not seem to have suffered any injury from the serious leak previously reported by the Consul, as rendering necessary the trans-shipment of her cargo to the Flambeau.‖

	Steamers.	Guns.	Cartridges.	Value.
				Dollars.
September 3 ..	Pereire.	2,155	462,500	59,195
September 20 ..	Lafayette	15,840	3,955,000	417,633
October 4 ..	Ville de Paris	45,023	9,424,000	915,487
October 20 ..	St. Laurent	16,923	10,299,880	562,785
October 29 ..	Pereire.	104,870	2,164,000	784,575
November 2 ..	Avon	58,340	11,500,000	707,000
November 7 ..	Ontario	72,540	17,785,552	1,764,655
November 15 ..	Lafayette	50,660	9,538,736	930,354
November 28 ..	Erie	120,800	16,818,120	1,744,080
November 28 ..	Ville de Paris	11,760	12,399,320	1,053,205
December 13 ..	Pereire.	14,100	8,164,000	636,238
January 2 ..	Concordia	25,180	158,751	834,000
January 4 ..	Lafayette	37,000	4,671,000	754,275
January 14 ..	City of Buenos Ayres ..	8,240	1,317,000	448,400
January 21 ..	Ville de Paris	26,100	2,887,000	747,451
February 6 ..	Washington	..	2,275,820	421,240
February 13 ..	Riga	..	..	731,380
March 1 ..	Pereire.	..	3,160,000	398,776
Total ..	.. .. ..	609,531	117,082,379	13.810,779

It appears, from the official Report of the Secretary at War, that the sales of ordnance stores by the Government of the United States in the year 1870–1871 amounted, in the aggregate, to 10,000,000 dol.

* Appendix to Case of United States, vol. vi, p. 51.
† Appendix to British Case, vol. v, p. 27.
‡ Appendix to Case of United States, vol. vi, p. 47.
§ Appendix to British Case, vol. v, p. 31.
‖ Appendix to Case of United States, vol. vi, pp. 46, 53.

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Representations on this subject were made by Mr. Adams to Earl Russell on the 24th of February, 1862. Lord Russell replied, on the 25th of March, explaining the Governor's proceedings, and Mr. Adams, though apparently dissatisfied, did not pursue the subject.*

Restrictions on coaling of Nassau.

The attempts of the United States to form coal depôts for their cruizers at British ports were not confined to Nassau. They had simultaneously sent vessels laden with coal for the same purpose to Bermuda (which was likely to prove a convenient station), consigned in a similar manner to their Consul there. The Governor, on learning that the conduct of the authorities at Nassau in preventing such a depôt had been approved, informed the United States' Consul that it had been decided not to allow the formation in any British Colony, either by the Government of the United States or by that of the so-called Confederate States, of a depôt for the use of their respective vessels of war.†

Orders of the 31st January, 1862, in relation to Nassau.

The Orders of the 31st of January, 1862, issued shortly after the occurrences at Nassau, laid down general rules to be observed in all the ports of the United Kingdom, and of Her Majesty's Colonial possessions, as to the admission of armed ships of either belligerent, the time during which they might be allowed to remain, and the conditions under which they might be suffered to receive coal and other supplies. These Orders at the same time closed the ports and waters of the Bahama Islands to the ships of war and privateers of both belligerents. They will be referred to, as regards their general operation, in a later part of this Counter-Case; and ample materials will be supplied for judging whether they were or were not fairly executed, and whether it was by Confederate ships or by ships of the United States that the hospitalities of British ports were the more largely used.

Pages 40, 45, 46.

In the definition of neutral duties produced in the earlier portion of the Case of the United States,‡ a definition which purports to lay down "principles" and "doctrines of International Law," and to be "in harmony with the views of the best publicists"—it is affirmed that "the ports or waters of the neutral are not to be made the base of naval operations by a belligerent." "Ammunition and military stores for cruizers cannot be obtained there; coal cannot be stored there for successive supplies to the same vessel, nor can it be furnished or obtained in such supplies." It might have been reasonably supposed therefore that the course pursued by the authorities at Nassau, in the case of the Flambeau and her coal-ships, would have merited the approval of the Government of the United States, instead of being denounced as a violation of neutrality. The restriction in question is not indeed commanded, as the Government of the United States supposes it to be, by any rule of International Law, but it may be imposed by any neutral Power which thinks fit to do, and was, under the circumstances of the case, clearly proper and convenient.

The same observation applies to the Orders of the 31st January, 1862. It is undeniably within the competence of a neutral Government to close, if it think fit, all its ports, or any selected ports within its dominions, to belligerent ships of war. This has frequently been done. Thus, in 1820, during the war between Spain and the Spanish-American Republics, an Act of Congress was passed, on the recommendation of the President, by which it was enacted that no foreign armed ship should enter any other harbour than Portland, Boston, New London, New York, Philadelphia, Norfolk, Smithville, Charleston, or Mobile, unless in case of distress, stress of weather, or pursuit by the enemy. This Act was to continue in force for two years. In determining to made such a selection, and in designating particular ports for the purpose, the neutral Government has to consult its own judgment only. But where any particular port or place is, from geographical situation or local circumstances, liable to be made use of by both belligerents or either as a station or base for naval operations, it becomes a simple measure of ordinary prudence and precaution.

To prevent the Bahama Islands from being used for this purpose was the avowed intention both of the restriction on coaling enforced at Nassau and of the subsequent Order. These islands were so near to the American coast that the liberty to resort to them could not be valuable to either belligerent for any other purpose, unless it were to the belligerent whose own harbours were under blockade, and to whom, therefore, the exclusion must necessarily be more unfavourable than to the other. What, then, is the grievance of the United States? It is that the United States' cruizers were precluded from using the Bahamas for belligerent operations. Nassau was frequently visited by blockade-runners, and was within a moderate distance of Charleston and Savannah; it was, therefore, a convenient station and port of call for cruizers employed to watch and capture blockade-runners. Thus it is explained that "further stay of the United States'

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* Appendix to Case of United States, vol. i, p. 346. † Appendix to British Case, vol. v, p. 8.
‡ Pages 148, 167, 168, 169.

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vessels of war was useless" when the expedient was adopted of sending in cargoes in light and speedy vessels. Further stay was useless, because the cruizer waiting in port could not overtake and capture these light and speedy vessels. If ships carrying contraband and other goods to blockaded ports in the Confederate States were suffered to repair to the Colony, United States' cruizers ought, it is said, to have been suffered to repair thither likewise for the purpose of watching for and making prize of those ships and their cargoes. That the port would in the latter case have been used as a station for hostilities, and a point of departure for naval operations, and that it was not so used in the former case, is a distinction which seems to escape the notice of the Government of the United States.

The rigorous definition of the duties of a neutral furnished in the Third Part of the Case of the United States seems to be forgotten in the Fourth Part. The stringent rules by which the abuse of neutral ports by belligerent vessels was to be prevented have now disappeared, and the measures adopted to guard against that abuse are reckoned among the cases "wherein Great Britain failed to perform her duties as a neutral."

PART. V.

The Sumter and Nashville.

HAVING examined the miscellaneous charges preferred against Great Britain, but not falling within the limits of the reference to arbitration, such as those which regard the traffic in arms and military supplies, Her Majesty's Government now approaches that part of the Case in which the Government of the United States at length proceeds to specify the vessels to which its claims relate, the failures of duty which it alleges in respect of them, and the nature of the claims on account of those alleged failures of duty. The wide conceptions of neutral obligation which had been previously presented to the Tribunal here assume a concrete form, and are made the basis of actual demands upon a neutral Power; and we are thus enabled to understand what those conceptions really mean, to what lengths the Government of the United States is prepared (if we may judge from the Case) to carry them, and what is the code of international duty which it proposes to enforce against neutrals, and asks the Arbitrators to sanction.

The first vessels in the list are the Sumter and Nashville. There is no material dispute as to the facts relating to these two ships. Both of them were fitted out and armed for war in Confederate ports, were there commissioned as public ships by the President of the Confederate States, and thence dispatched to cruize under that commission. Up to that time neither of them, so far as appears, had ever been in a British port. In respect, therefore, of the original outfit and equipment of these ships, the United States have found themselves unable to suggest any fault on the part of Great Britain, or to bring any charge against her. Nor is it suggested that either of them obtained men, arms, or other military supplies, or augmented or renewed in any manner her military equipment, within British ports or waters.

The Sumter.

The history of the Sumter has been accurately related in the British Case. It will have been observed that she was a steam-ship purchased in a Confederate port, about or soon after the time of the commencement of the war, by the Navy Department of the Government of the Confederate States; that she had received a crew and was being actively prepared for war before the end of April 1861, and upwards of a fortnight before the date of Her Majesty's Proclamation of Neutrality; that she put to sea as a commissioned cruizer of the Confederate States on the 30th June, 1861; that she entered in succession, during the period of her cruize, the Spanish port of Cienfuegos, the Dutch port of St. Anne's, Curaçoa, the Venezuelan port of Puerto Cabello, the British port of Trinidad, the Dutch port of Paramaribo, the Brazilian port of San Juan de Maranham, the French ports of Port Royal and St. Pierre in Martinique, the Spanish port of Cadiz, and the British port of Gibraltar. In each of those ports she was received as a commissioned ship of war. At Cienfuegos, Curaçoa, Paramaribo, Trinidad, Maranham, and Martinique, she was suffered to renew her stock of coal and provisions. At Curaçoa she appears to have stayed seven days; at Paramaribo, twelve; at Maranham, nine; at Martinique fourteen; at Cadiz, thirteen.* The period of time which elapsed between the dates at which she was suffered to coal at various ports appear to have been as follows—namely, from Cienfuegos to Curaçoa, ten days; from Curaçoa to Trinidad, six; from Trinidad to Paramaribo fourteen; from Paramaribo to San Juan de Maranham, six; from thence to Martinique fifty-five; from Martinique to Cadiz, forty-two. As to the quantity of coal which she took on board, she appears to have obtained 100 tons at Cienfuegos, 120 tons at Curaçoa, 80 at Trinidad, 125 at Paramaribo, and 100 at Maranham.† At Martinique she received, by the written permission of the Governor, a sufficient stock to carry her across the Atlantic. At Trinidad she had applied for leave to purchase coal from the Govern-

The Sumter.

* Appendix to British Case, vol. vi, pp. 1, 69, 81, 103, 112, 116; also Semmes' "Adventures Afloat," pp. 139–147, 154–160, 181–187, 197–206, 210–216, 232–260, 297–304.

† Appendix to British Case, vol. ii, p. 5; vol. vi, pp. 2, 69, 84; Semmes' "Adventures Afloat." p. 145.

Part V.

The Sumter.

ment stores, but this request was refused and she procured it from private merchants. The question, whether she was properly received as a ship of war, or ought to have been treated as a pirate, was raised by the United States on two occasions before she touched at Trinidad (namely, on her arrival at Cienfuegos and Curaçoa respectively), and twice afterwards, namely, on her arrival at Maranham and at Martinique; and in every case fruitlessly. The right of neutral Powers to admit her to the ordinary hospitalities of their ports, and to receive her as a ship of war on the mere declaration of her commander, was upheld and defended in long and carefully reasoned State Papers by the Governments of Brazil and the Netherlands,* and was afterwards as firmly maintained by France.

Of the prizes taken by the Sumter eleven were captured before she put in at Trinidad, none between the date of her leaving Trinidad and that of her arriving at Paramaribo, where she took in fresh supplies of coals and provisions; two between Paramaribo and Puerto Cabello; three after leaving Martinique.†

It will have been observed that at Gibraltar the Sumter was disarmed and dismantled; her crew were dismissed; she was sold, sent to Liverpool, and never afterwards used for war. She had arrived at Gibraltar before the issue of the orders of 31st January, 1862, which limited the period during which belligerent vessels of war were to be suffered to remain in British ports. Those orders, therefore, could not with justice have been applied to her. When she left Gibraltar she left it unarmed, and at the mercy of any United States' ship which might fall in with her.

On these facts the United States ask the Arbitrators to find and certify that Great Britain "failed to fulful the duties set forth in the three Rules in Article VI of the Treaty of Washington, or recognized by the principles of International Law not inconsistent with such rules;" and they ask that, in considering the amount to be awarded to the United States, should the Tribunal exercise the power to award a gross sum, "the losses of individuals in the destruction of their vessels and cargoes by the Sumter, and also the expenses to which the United States were put in the pursuit of that vessel, may be taken into account."‡

Case of the United States, p. 89.

So far as Her Majesty's Government is able to understand the grounds of this demand (setting aside the accusation of "habitually insincere neutrality" against Great Britain), they appear to be as follows:—

1. "That the Sumter was furnished with an excessive supply of coal at Trinidad, which supply enabled her to inflict the subsequent injuries she did on the commerce of the United States."§

Ibid., p. 88.

We have here an application of the novel principle asserted in the Third Part of the Case. The Arbitrators had there been told that "if, in these days, when steam is a power, an excessive supply of coal is put into the bunkers" of a belligerent cruizer in a neutral port, the neutral Government will, according to the general principles of international law, "have failed in the performance of its duty." They had been told that, in order to prevent this, the neutral Government is bound to apply a "wakefulness and watchfulness proportioned to the exigencies of the case and the magnitude of the interests involved." The local authorities must therefore estimate with precision the quantity of fuel which will probably be necessary, taking into account the sailing qualities of the vessel, to bring her to her nearest port, and to watch with the utmost jealousy lest she should procure more. For any failure in this respect compensation in money is to be paid to the other belligerent by the neutral nation. The Arbitrators are asked to affirm by their award this supposed rule of international law, and, in a case where a cruizer, distant more than 1,000 miles from home, has purchased no more than 80 tons of coal in a neutral port, to charge the neutral nation with the value of all captures made by the cruizer, and the cost of fitting out and keeping at sea all vessels that may have been directed to look after her.

It must be conceded that this view of international law opens a sufficiently alarming prospect to neutral Powers. Happily, it is as completely erroneous in principle as it would be intolerably unjust in practice.

International law sets no limit to the quantity of coal which may be obtained by a belligerent cruizer in a neutral port. There is no such thing, therefore, as an "excessive" supply. Whatever such a vessel may require for repairing or renewing her sailing or steaming power may lawfully be furnished to her; supplies of arms or munitions of war, repairs or alterations of her structure or equipment, serving to augment her warlike force and directly applicable to that purpose, she may not lawfully receive. The general

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* These despatches will be found printed in full, Appendix, vol. vi, pp. 12, 29, 35, 75, 84, 92, 98.

† See List given in Appendix to Case of the United States, vol. iv, p. 473.

‡ Page 327.

§ Page 324.

consent of nations has drawn this line, and it draws no other.* Even, however, if there had been any foundation for the pretended rule, what proof have the United States given that it was infringed? Where is the evidence that the supply of coal to the Sumter at Trinidad was more than enough to carry her home? There is none whatever. The Sumter procured coal at a port in a British colony, as she procured it before and afterwards at Spanish, Dutch, Brazilian, and French ports; in fact, the quantity she received at Trinidad seems to have been less than she got at other places; and it is clear that each of those Powers is, according to the view of the United States, equally liable, as regards this vessel, to the entire claim which they now make against Great Britain. If any additional fact could make the answer of Great Britain more complete, it would be the circumstance that, in that part of the Sumter's cruize within which the coal she obtained at Trinidad was exhausted, she made not a single capture†. The captures for which compensation is claimed were made four months afterwards, with the aid of coal procured, not at Trinidad, but at Martinique.

2. The remaining argument in support of this claim is, that the Sumter ought to have been compelled to leave Gibraltar (where, according to the United States' Consul, he had himself made it impossible for her to procure coal for navigation); and that she was transferred whilst in that port, by a sale which is alleged to have been fictitious, but which appears from an intercepted letter produced by the United States to have been real.‡ Whether it was fictitious or not, was a question into which it was not the duty of the British Government to inquire, nor was it a matter of much importance to the United States. If the sale was real, the Confederate Government parted with the ship and got the money; if it was merely nominal, they got no money but retained the right to the ship. How the circumstance that she lay in port, disarmed and without a crew, from January 1862 to February 1863, or the sale of her in December 1862 to a real or nominal purchaser, could have enabled her to make prizes in the year 1861, is not explained to the Arbitrators. All her captures having been previously made, the United States suffered no loss in consequence of anything which happened after she entered the port of Gibraltar. Even if this had been otherwise, in what respect do the facts alleged by the United States involve any failure of neutral duty? Orders were issued by Her Majesty's Government, on the 30th of January, 1862, that, if any ship of war or privateer of either belligerent should, *after* the time when the orders should be first notified and put in force in the United Kingdom or in any colony or dependency of the Crown, enter any port, roadstead, or waters of the United Kingdom or of any such colony or dependency, she should be required to depart within twenty-four hours, or, if in need of supplies or repairs, as soon as possible after the expiration of that period. The Sumter reached Gibraltar several weeks *before* these Orders had been either notified or issued. The Orders were therefore violated (it seems to be argued) to the detriment of the United States, by suffering her to remain in port even when disarmed and without officers or a crew. Her Majesty's Government is unable to follow this train of reasoning. It cannot be admitted that this Government was under any obligation to enforce Orders different from those which it had made, and inflict on a vessel, actually in a British port, the injustice of subjecting her to the operation of an extremely stringent rule, of which she could have had no notice when she entered, and which, if enforced against her, would have exposed her to certain capture or destruction.

"The sale," it is added, "was a palpable evasion." "The purchase of ships of war belonging to enemies is held in British Courts to be invalid." It may be presumed that what the Government of the United States wishes to express is that a purchase (*flagrante bello*) of a belligerent ship of war by a neutral, in a neutral port, has been held invalid. This is declared to be a "simple proposition." It is really very simple, and yet in the Case of the United States it seems to be misunderstood, so as to introduce a confusion as to the relative rights of belligerent and neutral.

The sale of a belligerent ship of war, cooped up by an enemy in a neutral port, has been adjudged in a Prize Court of that enemy to be invalid; that is, ineffectual to transfer the ownership of the vessel from the belligerent to a neutral, so as to relieve

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* The Instructions of 1793 have been already referred to—

"Equipments in the ports of the United States of vessels of war in the immediate service of the Government of any of the belligerent parties, which, if done to other vessels, would be of a doubtful nature, as being applicable either to commerce or war, are deemed lawful."

* * * * * *

"Equipments of vessels in the ports of the United States, which are of a nature solely adapted to war, are deemed unlawful."

† Appendix to Case of the United States, vol. vii, p. ccxiv.

‡ Ibid., p. 71.

Part V.

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The Sumter.

her from the risk of capture.* This was never denied by Earl Russell, nor is it questioned by Her Majesty's Government. But the transaction, though *invalid* as against the enemy, is not *illegal;* it violates no law, and calls for no interference on the part of the neutral Government. Within the neutral jurisdiction, indeed, it is, if not prohibited by the local law, a perfectly valid sale, conveying to the purchaser a title to the ship, which could be displaced only by a regular sentence of condemnation in the enemy's country. If, after the sale of the Sumter, the British Government had protected or undertaken to protect her at sea, as a British ship, against capture by the United States, the latter would have had just cause of complaint. But Earl Russell, instead of undertaking to do this, expressly disclaimed, in his Note to Mr. Adams of the 15th January, 1862, any intention of doing so. "Her Majesty's naval and military officers at that port (Gibraltar) have received instructions not to give any protection to that vessel beyond the waters of Gibraltar." He gave Mr. Adams all that Mr. Adams asked—certainly all that he had any right to ask.† The Sumter quitted Gibraltar unarmed, and unprotected from capture. She was exposed to capture all the way to Liverpool. She was exposed to it when, as a freight-carrying vessel under the British flag, all her warlike fittings having been carefully removed, she left Liverpool for a port of the Confederate States. She appears to have escaped it only through the fault of the United States' cruizers which had been directed to take possession of her; and, because these cruizers failed to execute their orders, Great Britain is now called upon to pay for the expenditure incurred in respect of them, as well as for prizes the Sumter had previously made when commissioned as a ship of war.

It may here be observed that, when the United States' Minister in London was arguing that the sale of the Sumter ought to be prohibited in Gibraltar, the United States' Minister at Madrid had admitted that it might be allowed to take place in Cadiz. In a conversation with M. Calderon Collantes, on the 10th January, 1862, which Mr. Perry afterwards reported to his own Government, the latter said, speaking of this vessel:—

"If they did not choose to go out to sea again, as they had entered, they might stay under the protection of the Spanish flag; and indeed their ship, if she should be sold out of their possession into honest hands, or leave all her armament and munitions of war, laying aside all pretensions to being a war vessel or a privateer of the so-called Confederate States or of anybody else, returning really and honestly to her former condition of a merchant steamer, might perhaps be liable to capture by the navy of the United States, but she might then be repaired in Cadiz without contravening the Royal Decree of June 17."‡

The Nashville.

The case of the Nashville must fall with that of the Sumter. The supposed failure of international duty which is alleged against Great Britain in respect of the Nashville is merely this, that, having been armed and commissioned as a ship of war in a Confederate port, she was, on three different occasions, admitted into British ports and suffered to coal there.

In the Case of the United States we are told that "she took on board," at St. George's, Bermuda, "by permission of the Governor, 600 tons of coal, and this act was approved by Her Majesty's Principal Secretary of State for the Colonies." By the "act" is probably meant the supposed permission of the Governor. No act appears to have been done by the Governor, and no permission asked or granted; but he appears (whilst refusing to assist the commander of the ship to obtain coal by purchase from the Government stores) to have made no objection to his procuring it from private dealers, and to have placed no restriction on the quantity. No order imposing any restriction had then (October 1861) been issued by Her Majesty's Government, nor by any other neutral Power;

Page 87.

* This, and no more, was decided by Lord Stowell, in the case of the Minerva, Robinson's Admiralty Reports, vi, 396. It is said in the Case of the United States (p. 322) that, "after reflecting upon this simple proposition for more than five weeks, Earl Russell denied it." Earl Russell did not deny it; he pointed out the misapprehension of it into which Mr. Adams had fallen; and the decision that the Sumter was not to be protected, when out of British waters, had been announced and conveyed to the officers of the Government at Gibraltar, more than three months before. (See British Case, p. 19.)

† Mr. Adams had asked "the assistance of Her Majesty's Government to prevent any risk of damage to the United States from a fraudulent transaction in one of her ports; or, in default of it, of declining to recognize the validity of the transfer, should that vessel subsequently be found by the armed ships of the United States sailing on the high seas."—British Case, p. 19.

‡ See Appendix to British Case, vol. vi, p. 110.

and no restriction was or is imposed by any rule of International Law. No complaint as to the quantity supplied was made at the time. The amount actually shipped by the Nashville was between 400 and 500 tons.*

At Southampton the Nashville was allowed to coal, the United States' ship Tuscarora being allowed to receive a supply at the same time. On her return to Charleston she again touched at Bermuda, and obtained from a British merchantman in that port coal enough to assist her on her return voyage. The decision that depôts of coal should not be formed in the island for the use of the cruizers of either belligerent did not prohibit this act, as it did not afterwards prevent United States' ships of war from obtaining at Bermuda, on two or three occasions, like supplies when necessary. "She left," it is said, "under the escort of Her Majesty's steamer Spiteful." What is thus described as an "escort" was in truth only a necessary measure of precaution adopted by the Admiral on the station. "As, when she sailed, there were several vessels in sight, some of which might have been United States', I thought it advisable," wrote Admiral Milne, "to send the Spiteful outside, to insure respect being paid to our territorial limits."†

Her Majesty's Government has deemed it respectful, as well to the United States as to the Arbitrators, to examine the claims made in regard to these two vessels and the reasons which have been produced to justify them. But Great Britain may surely, with some justice, complain of being called upon to meet, before a Tribunal of Arbitration, demands as to which the sole difficulty consists in treating them as serious, and in discovering how the arguments employed can be imagined to lend them any support whatever.

* See Appendix to British Case, vol. v, p. 14.

† Appendix to British Case, vol. ii, p. 127; vol. v., p. 2. The following are the instructions which were given by Admiral Milne, to the Commander of the "Spiteful" on the occasion :—

"You are hereby required and directed to put to sea forthwith in the sloop under your command, and proceed outside on the Coast of these Islands with a view of preventing the Confederate steamer Nashville, now about to leave the harbour of St. George's, from interfering in any way whatever with vessels of any nation so long as they are within three nautical miles of the shore of the Bermudas and their reefs. As soon as the Nashville is out of sight you will return to anchorage.

"Given under my hand, on board the Nile, at Bermuda, 23rd February, 1862.

(Signed) "ALEX. MILNE."

"To W. C. F. Wilson, Esq., Commander of Spiteful,

"By command of Commander-in-chief.

(Signed) "S. T. SUCTER, *pro Secretary*."

PART VI.

The Florida and Alabama.

In the Case of Great Britain, the facts relating to the Florida, Alabama, Georgia, and Shenandoah, were stated in considerable detail. The building of each of these vessels, her original departure from this country, and the circumstances under which she received her equipment, and was armed, manned, and fitted out for war, were presented to the Arbitrators as accurately and fully as Her Majesty's Government was enabled to present them by the means of information at its command; while so much of the documentary evidence, whether favourable to Great Britain or not, as appeared material to a just adjudication on the questions at issue, was included in the Case. The facts which were in the possession of the British Government at the time when the events respectively took place, whether brought to its knowledge by the Minister of the United States or ascertained by independent inquiry, were in this recital kept distinct from facts which did not become known till afterwards. The general course of conduct pursued by the Government, in respect of equipments or apprehended equipments of ships of war within its jurisdiction, was at the same time placed before the Tribunal, and attention was invited to those cases in which the means of prevention employed proved effectual, as well as to those in which they failed.

The method of statement adopted in the Case of the United States is in some respects different. Circumstances known at the time, and many others not known till afterwards, are there arranged without distinction in chronological order, so as to form a consecutive story, whilst at the same time no clear line is drawn between facts which are substantiated, and those which the Government of the United States merely thinks or suspects to be true. Assertions resting only on the belief of an American Consular officer in a foreign port, on a report transmitted by him that they were currently believed there, or on information said to have been received by him from anonymous persons, are freely introduced into the narrative as if they were ascertained facts.

Her Majesty's Government does not complain of this mode of statement, which has doubtless been adopted for sufficient reasons. But it manifestly imposes on the Arbitrators the duty of distinguishing for themselves between allegations which are proved and allegations which are not proved, and between facts which are, and facts which are not, justly to be taken into account as supporting or contributing to support a charge of negligence against Great Britain. They have to be satisfied, not only that acts were done which it was the duty of this Government to use diligence to prevent, but that such diligence was not in fact exerted; and of this they have to be satisfied, not by assertion only, but by proof.

It has been observed in the Case of Great Britain, that in countries where (as in Great Britain) the Executive is subject to the laws, foreign States have a right to expect that the laws should be such as, in the exercise of ordinary foresight, might reasonably be deemed adequate for the repression of acts which the Government is under an obligation to repress, and further that the laws should be enforced and the legal powers of Government exercised, so far as may be necessary for this purpose. But it was added that, where such laws exist, foreign States are not entitled to require that the Executive should overstep them in particular cases, in order to prevent harm to foreign States or their citizens; nor that, for this purpose, it should act against the persons or property of individuals, unless upon evidence which would justify it in so acting if the interests to be protected were its own or those of its own citizens. The principle which these propositions convey is of supreme importance to all nations in which the paramount dominion of law is recognized, the protection which it secures to civil and political liberty valued, and the Executive not entrusted with large and arbitrary powers. On no other terms indeed could such States undertake to subject themselves to any international obligations whatever. No constitutional State could reasonably be assumed to have engaged to break through or set aside its laws, in the interest of foreign nations, whenever an occasion might arise for which the laws were found to have imperfectly

provided beforehand. It has been further shown that the law of Great Britain, as it existed at the time when these occurrences took place, was such as in the exercise of ordinary foresight might reasonably be deemed adequate for enabling the Government to discharge its obligations as a neutral Power. It has appeared also that the powers which the Government possessed, to prevent the fitting out, arming, and equipping within its jurisdiction, of vessels intended for the naval service of the Confederate States, or the departure, with that intent, of vessels specially adapted within its jurisdiction to warlike use, were defined and regulated by law; that the law provided certain modes of prevention, and required, before authorizing the condemnation of a suspected vessel, that the facts alleged against her should be capable of proof; and that the Government had in no such case any power of seizure or detention, except with a view to a subsequent condemnation in due course of law, and on the ground of an infringement of the law sufficient to warrant condemnation. By proof, it was added, in a British Court of law, is understood the production of evidence sufficient to create in the mind of the Judge or jury (as the case may be) a reasonable and deliberate belief of the truth of the fact to be proved, such as a reasonable person would be satisfied to act upon in any important concerns of his own. And by evidence is understood the testimony, on oath, of a witness or witnesses produced in open Court, and subject to cross-examination, as to facts within his or their personal knowledge. Testimony which is mere hearsay, as to the existence of common reports, however prevalent and however generally credited, or as to any matter not within the knowledge of the witness, is not admitted in an English Court.* These rules, which in England have been deemed expedient for securing the due administration of justice, may not be regarded as necessary in some other countries. But there was clearly nothing in them which could be supposed to be inconsistent with the dictates of natural justice; and this being so, it was the right of Great Britain to adhere to and apply them in all cases arising within her jurisdiction, as it would be the right of Italy, of Switzerland, of Brazil, or of the United States, to apply respectively in corresponding cases their own rules of procedure and evidence.

Whilst, therefore, the obligation to use due diligence in order to prevent certain acts from being committed within the jurisdiction of the Sovereign is an obligation wholly independent of municipal law, it is at the same time incontrovertibly true, that, in determining the question whether due diligence has been used in a given case, the municipal law of the particular country, the modes provided for enforcing it, the powers vested in the Executive, the established rules of administrative and judicial procedure, may be, and commonly are, matters which it is proper and material to take into account.

The failures of duty which the United States impute to Great Britain in respect of the Florida, Alabama, Georgia, and Shenandoah consist partly in an alleged want of due diligence in preventing the original equipment of those vessels, and their original departure from Great Britain; and partly in the hospitalities afterwards afforded to them in British ports, where, it is insisted, they ought to have been seized and detained.

The Florida.

The Florida.

The history of the Florida divides itself into three parts: the first ending with her departure from Great Britain; the second with her release at Nassau; the third including her subsequent equipment, her arrival at Mobile, and her cruize after leaving Mobile.

The first part of this history, as told in the Case of the United States, is as follows:—† The Florida was built to the order of Bullock, an agent of the Confederate Government. The contract for building her was made with one manufacturing firm, and sub-let to another. It was made in the autumn of 1861, and was completed by February 1862. She waited for the arrival of Bullock, and four other Confederate officers, "who were to take commands in the vessels which were contracted for in Liverpool," and sailed soon afterwards, consigned to Heyliger, a Confederate agent at Nassau, or to Adderley and Co., merchants resident there. Her armament was at the same time prepared at Liverpool, sent thence to Hartlepool, and shipped on board a steamer called the Bahama for Nassau.

Case of the United States, pp. 90 *et seq.*

"It was a matter," the Tribunal is told, "of public notoriety that this was going on. All the facts about the Florida, and about the hostile expedition which it was proposed to make against the United States, were open and notorious at Liverpool." The inference is, that all the facts which are stated in the Case were, or ought to have been, known to Her Majesty's Government: that the Government knew, or ought to have known, of the contract with Bullock; that it knew, or ought to have known, of the arrangements for arming the ship; since these things were generally known in the place where the events occurred.

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* British Case, p. 51.

† Case of the United States, pp. 332 *et seq.*

Where is the proof of these assertions? Where is the proof that even the American Consul at Liverpool, whose activity in hunting for secret information appears to have been indefatigable, and to whom every one resorted who had information to disclose, knew of the contract with Bullock, or of the dispatch, cargo, and destination of the Bahama? And if he knew them, why did he not either communicate his knowledge, and the proofs in his possession, to the British Government, or himself lay an information on oath against the ship?

It is clear, that Mr. Dudley himself was in ignorance of the facts which, in the Case of the United States, are asserted to have been open and notorious to all. His attention had been called to the Florida, then in the builder's yard, as early as November 1861. On the 24th January, 1862, he writes that "she is reported for the Italian Government;" but the fact of the machinery being supplied by Fawcett and Preston, and other circumstances, make him "suspicious," and cause him to believe she is intended for the South.* On the 4th February the circumstances are still "somewhat suspicious." "There is much secresy observed about her, and I have been unable to get anything definite, but my impressions are strong that she is intended for the Southern Confederacy. I have communicated my impressions and all the facts to Mr. Adams, our Minister in London." At that moment the ship was taking in her coal; and "appearances indicate," he wrote, "that she will leave here the latter part of this week."† He makes, however, no representation to the Government, nor does Mr. Adams make any. On the 12th he writes to Mr. Seward that everything he sees and hears confirms him in the belief that the vessel is intended for the Confederacy; but he mentions no fact, except that Miller (the builder) had said that Fawcett, Preston and Co. gave him the contract. Still no representation is made. On the 17th, he has "obtained information from many different sources," which "goes to show" that she is intended for the Confederate States. Nevertheless the solitary fact mentioned is that Fawcett, Preston and Co. are said to be the owners, with the addition that advances are said to have been made to them and to Miller by Fraser, Trenholm and Co.‡ Afterwards he tells Mr. Seward that he has "no doubt," and has "positive evidence, that she is for the South;" and, on the 5th March, that two persons in the employ of Fawcett, Preston and Co. had said so.§ But, up to the time when she left Liverpool, his correspondence mentions not a single circumstance proving, or tending to prove, for what purpose she was intended, beyond some rumours as to her probable movements, which turned out to be erroneous. With the "notorious fact" that she had been ordered by Bullock he is evidently quite unacquainted.‖ As to the Bahama, so far is he from being aware of the "notorious fact" that she was about to take out the Florida's armament, that up to the 6th March, he is making fruitless inquiries about that vessel, and can obtain no information about her, or any vessel of that name.¶ Several days afterwards he learns that she is loading with cannon and other munitions of war at Hartlepool, and "*will either run the blockade*, or land her cargo at Bermuda or Nassau, *and have it ferried over in smaller vessels.*"** He believes her, in short, to the last, to be merely a blockade-runner laden with articles contraband of war, and has no idea of her having any connection with the Florida.

Here, then, we have Mr. Dudley's confidential correspondence with his official superior. We find him quite in the dark as to the main facts which are relied on in the Case of the United States and declared to have been perfectly open and notorious at Liverpool, but laboriously picking up scraps of secret information, till he arrives at a confident opinion, respecting the grounds of which he is silent. But it may here be observed, by the way, that Mr. Dudley, though he appears to have been an intelligent and painstaking officer, was often confident of facts as to which he was entirely mistaken.

We now perceive what is the value of the assertion, so frequently occurring in the Case, that facts alleged therein were open and notorious, and therefore must or should have been known to Her Majesty's Government. In truth, these open and notorious facts do not appear to have been discovered till long afterwards, even by the industrious researches of the Government and subordinate officers of the United States.

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* Appendix to Case of the United States, vol. vi, p. 214. † Ibid., p. 215.

‡ Ibid., p. 216. § Ibid., p. 220, 221.

‖ Mr. Seward had, however, informed Mr. Adams in August 1861, that Bullock was said to be in Europe, and to have contracted for ten war-steamers (vol. vi, p. 33). According to the Case of the United States Bullock was in the Confederate States from the autumn of 1861 until immediately before the Florida sailed (p. 334).

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¶ Appendix to Case of the United States, vol. vi, p. 222.

** Ibid., p. 223.

Let us now recall what was known to the British Government. This has been fully and accurately stated in the Case of Great Britain.*

The first representation made to Earl Russell was received on the 19th February, three months after the time when Mr. Dudley's attention was first directed to the ship. We have seen that it conveyed no information whatever on which a Government could act. Fawcett, Preston and Co., who gave the contract to the actual builder, were a firm carrying on an extensive trade; it was said that on a previous occasion they had been concerned in a shipment of arms for the Confederate States, and it was further stated that money had been advanced to them, and to the builder, by Fraser, Trenholm and Co. It is evident that these circumstances, even if they had been verified, could produce no more than a bare suspicion.

Mr. Adams, it is true, said that, should further evidence be held necessary, he would "make an effort to procure it in a more formal manner." All that Mr. Dudley knew was known to Mr. Adams. Does he, then, when the results of the inquiries directed by the Government were communicated to him on the 26th February, more than three weeks before the sailing of the ship, hasten to furnish the Government with the proofs which the latter had been unable to obtain for itself? No, he remains silent until the 25th March, after the ship has sailed. Either he had information on which the Government could act and did not impart it, or he had none. It is not very material which branch of the alternative is true; but, from the fact that no information possessed by him at that time has ever been produced, as well as from the whole tenor of Mr. Dudley's correspondence, we may assume that the truth lies in the second.

It is to be borne in mind that this was the first case (with one exception) in which a representation of this kind was made to the British Government. It cannot, therefore, be pretended that Mr. Adams was discouraged or deterred from furnishing information by any previous neglect or refusal to act on the part of the Government. The only case which had occurred before was that of the Bermuda, in which Mr. Adams, though he "believed," and was "morally certain," that the vessel was to be used for war, proved to be mistaken.†

What the Government did on receiving Mr. Adams' representation, is stated in the British Case. Inquiry was instantly directed, but no information whatever could be obtained tending to connect the vessel in any way with the Confederate States. She was declared by the builder to be ordered for a firm at Palermo, a member of which was registered, on his own declaration, as her sole owner, and had frequently visited her when building. She had on board no arms or military supplies. The statement, at page 242 of the Case of the United States, that she had guns on board, is erroneous.‡ Her first destination, as stated in her clearance, was Palermo; and her crew were nominally (and, as they evidently believed, really) hired for a mercantile voyage. On the one hand were the positive statements of the builder, the registered owner, and the Collector of Customs; on the other, the suspicion of Mr. Dudley that the vessel was still intended by her owner to pass, sooner or later, into the hands of the Confederate Government. But a suspicion is one thing, reasonable grounds of belief another; and the British Government, whilst it would have been bound to act on a reasonable belief that there was a present fixed intention to employ her as a Confederate ship of war, was neither bound by international duty nor empowered by its municipal law to act on a bare suspicion that she might pass into that employment.

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The circumstances that occurred between the arrival of the Florida at Nassau, on the 28th April, 1862, and her departure thence on or about the 7th August following, have been inaccurately and imperfectly stated in the Case of the United States, and, as Her Majesty's Government believes, accurately in that of Great Britain.

It is not correct that the United States' Consul, soon after the arrival of the vessel at Nassau, "called the attention of the Governor to her well-known character," and that the Governor declined to interfere.§ The United States' Consul, after mentioning the arrival of the ship, represented that it was believed and reported by many residents in the place "that she is being prepared and fitted out as a Confederate privateer;" and he requested that some inquiry might be made to ascertain how far she was "preserving the strict neutrality" enjoined by the Queen's Proclamation.‖ He was immediately answered that inquiries should be made; they were made accordingly, and the Consul was informed (as the fact was) that no attempt had been, or was being, made to arm the ship. The Governor did

Case of the United States, pp. 92, 93.

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* Pages 53 *et seq.* † Appendix to British Case, vol. ii, p. 133.

‡ This error is probably due to an oversight arising from a misconception as to the meaning of certain blanks in a common printed form of clearance. (See Case of Great Britain, pp. 56, 57.)

§ Case of the United States, p. 341. ‖ Appendix to British Case, vol. i, p. 14.

not "accept the statement of the insurgent agents"—of whom he knew nothing and with whom he had nothing to do—but that of the mercantile firm to whom she was consigned, and who were the only persons known to have any connection with her, and the proper persons to refer to. She was not "permitted to remain at Cochrane's Anchorage," without effectual precautions being taken to prevent a violation of the law.* It is not correct that "a second request to inquire into her character was made on the 4th of June and refused." The Consul, on the 4th June, inquired whether steps had been taken to ascertain her character, and was answered in the affirmative. The Governor "had directed steps to be taken to ascertain whether there was anything in the equipment or character of the Oreto which could legally disentitle her to the hospitalities of the port."† She was not arrested on the 7th June, nor was she released on the arrival of Semmes in the island; nor does it appear that the Bahama was arrested, or that the latter vessel was ever made the subject of any complaint. Lastly, it is said that the Consul, finding his representations to the Governor useless, "applied to Captain Hickley, of the Greyhound, and laid before him the evidence which had already been laid before the civil authorities. He answered by sending a file of marines on board the Oreto, and taking her into custody."‡ This statement is wholly and completely unfounded, and is shown to be so even by the documents referred to. Captain Hickley seized the vessel on the 16th, upon the complaint of the sailors, who had been defrauded by a deviation from the voyage for which they been hired; and on the 17th he renewed the seizure, with the sanction and authority of the Governor, who immediately gave directions that proceedings should be instituted against her in the Vice-Admiralty Court of the Colony.§ On neither occasion does it appear that CaptainHickley had any communication with Mr. Whiting. The Consul did, however, subsequently address to that officer a letter, which would alone have been sufficient to justify any Government in withdrawing his exequatur, an impropriety for which he received a merited reproof.‖

Case of the United States, p. 93.

It cannot be denied, on the part of the United States, that the Florida was seized, whilst at Nassau, on charge of a violation of the Foreign Enlistment Act; that proceedings were, by the Governor's directions, instituted in the proper Court, with a view to her condemnation; or that, after a regular trial, she was ultimately released by a judicial sentence. But, in order to destroy or diminish the effect of these proceedings, attempts have been made, in the Case of the United States, to attack the character and integrity of the Colonial authorities, and impute to the principal Law Officer of the Colony deliberate dishonesty in the discharge of his official duties. On the pretext that in other matters he had acted professionally as advocate for the mercantile house who were consignees of the vessel, he is accused of having, as Counsel for the Crown, so conducted the case intrusted to him as to secure its defeat, from motives of private interest or partiality;¶ of having neglected to call witnesses who could prove the facts, and managed his cross-examination of witnesses for the defence so as to suppress important evidence; and, lastly, of having intentionally hurried on the trial before evidence could be obtained from England. "Her Majesty's Government," the Arbitrators are told, "evidently considered that it would be relevant and proper to show the condition of the vessel when she left Liverpool; and should it appear, as it did appear, in Captain Hickley's testimony, that at the time of her leaving she was fitted out as a man-of-war, with intent to cruize against the United States, then it would be entirely within the scope of the powers of the Court in Nassau to condemn her for a violation of the Foreign Enlistment Act of 1819. Had the trial not been hurried on, such probably would have been the instructions from London."**

Ibid.

Ibid., p. 94.

Her Majesty's Government thinks it right to say that there is not the slightest foundation for these imputations. There is no reason whatever to suppose that the trial did not come on in regular course, or that the case was not properly conducted on the part of the Crown. That the Counsel for the Crown should have refrained from calling witnesses whose interests were strongly on the side of the defence, needs no explanation to any one acquainted with the rules of English judicial procedure; since, according to those rules, the party who calls a witness is in general precluded, should the evidence which he gives be unfavourable, from impeaching the witness's credibility; nor can he compel him to answer any questions which would expose the witness to a penalty, or to prosecution for an offence against the law. The evidence of Captain Hickley neither did, nor possibly could, prove anything as to the extent to which the vessel had been fitted out when she left Liverpool. It is perfectly true (and was, indeed, explicitly stated in the British Case)

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* British Case, pp 61, 62; Appendix to ditto, vol i, pp. 16, 18.
† Appendix to British Case, vol. i, p. 20.
‡ Case of the United States, p. 342.
§ Appendix to British Case, vol. i, pp. 23-27.
‖ Ibid., p. 28.
¶ Case of the United States, p. 344.
** Ibid., p. 347.

that the exclusion of evidence relating to acts done whilst the ship was at Liverpool was, in the opinion of Her Majesty's Government, an erroneous ruling on the part of the judge. But the question was, at least, open to reasonable doubt; and it can hardly be necessary to inform the Arbitrators that it is not in the power of Her Majesty's Government to "instruct" a judge, whether in the United Kingdom or in a colony or dependency of the Crown, how to decide a particular case or question. No judge in Her Majesty's dominions would submit to be so instructed; no community, however small, would tolerate it; no Minister, however powerful, could ever think of attempting it.

In the following extract from a Report transmitted by the Administrator and Attorney-General of the Colony these charges are completely disposed of:—

"The charges are ranged under the following heads, page 343: That the Attorney-General hurried on the trial before evidence could be obtained from Liverpool; that he conducted the cross-examination so as to suppress evidence unfavourable to the Oreto, and that certain named witnesses who could have shown that the Oreto was built for the Insurgents, and was to be converted into a man-of-war, were not called as they ought to have been; and there is a general charge pervading the foregoing, and otherwise specially stated, of misconduct on the part of the Attorney-General.

"Taking these *seriatim*, they are as follows:—

"First; That the trial was carried on before evidence could be obtained from Liverpool. The answer to this is that the vessel was proceeded against only for acts of equipment alleged to have taken place within the limits of the Bahama Islands. It was considered, whether rightly or wrongly, that the point was settled by the decision in the case of the Fabius (2nd C. Rob., page 245), which was an Appeal from the identical court, the Vice-Admiralty Court of the Bahamas, and in which it had been decided that Vice-Admiralty Courts had no jurisdiction to take cognizance of offences committed out of the limits of their local jurisdiction, and that prosecutions under the Foreign Enlistment Act were not within the 6th sect. of 2 Will. 4. c. 51, which gave an extended jurisdiction to that Court in certain specified cases, a position which may be considered as affirmed by the legislative action which has been taken on the point by the British legislature in the Vice-Admiralty Courts Act, 26 Vict. cap. 24, sec. 13.

"This being the conclusion arrived at, it was not considered necessary, in fact it was never suggested, that evidence could be obtained from England; but it was considered that the evidence of the mate and crew of the Oreto, combined with that of Captain Hickley and the other naval officers, was sufficient to show the animus with which the vessel was dispatched from Liverpool and her adaptation for warlike purposes; and this is admitted in the Case, as at page 343 the following paragraphs are found:—'The judge in deciding the case disregarded the positive proof of the character, intent, and ownership of the vessel.' And again, 'The overwhelming testimony of Captain Hickley and his crew was summarily disposed of.' And again, 'While thus ruling out either as false or irrelevant evidence against the vessel which events proved to be true and relevant, he gave a willing ear of credence to the misstatements of the persons connected with the Oreto;' allegations that completely relieve the prosecuting officer of the charges brought against him at page 344, and throw the onus of failure on the Judge; thus producing in the short space of two pages contradictory accusations against two officers of the Government, the one of which, if well founded, would afford complete refutation to the other.

"Secondly; That the Attorney-General conducted the cross-examination so as to suppress evidence unfavourable to the Oreto when it could be done.

"This is a charge which can only be met with a positive and indignant denial; whether the cross-examination was conducted skilfully or not is of course another question, which must be judged of from the examinations forwarded.

"Thirdly; The neglect to summon witnesses who could have given material evidence, and especially the omission to examine Maffit, Heyliger, and Adderley. Now, if the allegations in the United States' Case are well founded, each of these persons was *particeps criminis* in the equipment of the Oreto, and was liable to be proceeded against criminally for a misdemeanour, and on conviction to be punished by fine and imprisonment, and therefore they could not have been compelled to give evidence leading to the condemnation of the vessel for acts of equipment within the Colony, which would necessarily have tended to criminate themselves, and consequently it never entered into the minds of the Attorney-General or of Captain Hickley, who was in daily consultation with that officer, to attempt to examine those parties nor any other persons in the supposed service of the Confederate States. The existence of such persons as Evans and Chapman, who are named at page 345 of the Case, was entirely unknown to the Attorney-General, and also it is believed to Commander Hickley, who never named them to that officer. One important witness and one only was lost to the prosecution, namely, Jones, the boatswain of the Oreto, who had originally given the information to Commander Hickley, which mainly led to the arrest of the vessel. He disappeared before he could be examined, and was supposed to have been induced by persons in the interests of the vessel to go away.

"Duguid, the master of the Oreto, was, as will be seen on reference to his examination, questioned on the point, but he particularly denied all knowledge of the movements of the man.

"With the exception of Jones, every one was examined who could have been compelled to give evidence, and Jones was only not examined because he secretly removed himself from the jurisdiction of the Court.

"Another very great misstatement with respect to the trial of the Oreto is made at page 345. It is there stated that the cross-examination of Captain Hickley was conducted by a gentleman who was represented to be the Solicitor-General of the Colony, but who in that case appeared against the Crown. From the foot-note (2) this statement would appear to have been made on the authority of Consul Kirkpatrick, and if so, it proves that little reliance is to be placed on that person's statements. Mr. B. L. Burnside, a barrister of Lincoln's Inn, was the counsel referred to, and at the time (1862),

he held no office whatever under the Crown; and the United States' Government have, through the errors of their informants, confounded the case of the Mary or Alexandra, tried in 1865, with that of the Oreto in 1862. In May 1864, Mr. Burnside, however, was appointed Solicitor-General, and at the time of the seizure of the Mary he held that office, when, being employed in that case as counsel for the claimant, he cross-examined Captain Preston, of the British navy, a witness produced for the prosecution; but on the fact becoming known to the Governor that the Solicitor-General was so employed, he was called on either to give up his brief or resign his office, and he chose to do the latter.

"In concluding the remarks on this part of the Case of the United States, it is confidently submitted that the arrest and trial of the Oreto at Nassau was a *bonâ fide* proceeding."*

The Vice-Admiralty Court of Nassau was a court of competent jurisdiction; the authorities of the Colony were bound to pay obedience to its decree; and, as soon as it was pronounced, the persons claiming the possession of the vessel were entitled to have her immediately released. She was released accordingly, and sailed from Nassau, unarmed, having cleared as a merchant-steamer, and with a crew hired in the port, and hardly sufficient to navigate her, on or about the 7th August, 1862. The hiring of seamen at Nassau could not have been treated as an offence against law, since there was nothing to show that they were intended for the service of the Confederate States. Nor does it appear that they were, in fact, enlisted for that service.†

It is affirmed in the Case of the United States that the Florida, after quitting Nassau, was armed for war, by means of a vessel which accompanied her from that port, at one of the Bahama Islands, and therefore within British waters; and, in proof of this, several depositions are produced, purporting to have been made by common seamen and others who were hired to assist in the work. From these it would appear that, before the Florida sailed, a schooner, called the Prince Alfred, carrying as cargo some guns and ammunition, together with other supplies, put to sea from Nassau, as though with the design of running the blockade: that she was overtaken by the Florida about three hours after the latter had left the harbour, and that both vessels proceeded to a place called Green Cay, where the cargo of the Prince Alfred was transferred to the Florida—an operation which lasted several days. The latter (which up to that time had been known as the Oreto) then hoisted the Confederate flag, and assumed the name under which she has since been known. The Prince Alfred did not for some time return to Nassau, her captain being apprehensive that she might be seized for a violation of the law in assisting to arm and fit out the Florida in British waters.

Her Majesty's Government has not the means of either verifying or disproving the truth of this statement. Assuming it to be true, there can be no doubt that a violation of the sovereignty and neutral rights of Great Britain was committed by the commander of the Florida. But the fact that such a violation occurred does not argue negligence on the part of Her Majesty's Government. It took place indeed in British waters, since the whole group or chain of islands known by the name of the Bahamas are held to be under the dominion of Great Britain. But of these islands, which number several hundreds, and are scattered over a wide surface, all but a very few are desolate and uninhabited, and many are mere rocks or islets. Green Cay (which, if we may trust the testimony of the deponents, was the spot selected for this transaction) is a small uninhabited island lying sixty miles or more south of Nassau, on the edge of what is called the Great Bahama Bank, and visited, as Her Majesty's Government believes, only by fishermen.

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* Appendix to British Case, vol. v, p. 19.

† It is stated in the Case of the United States, as if it had some importance, that the Florida lay outside with a hawser attached to one of Her Majesty's ships of war. The simple explanation of this trivial fact is as follows. The Peterel—a Queen's ship—was then lying in the harbour, and two United States' ships of war were also there. The Commander of the Peterel, at the Governor's request, crossed the bar to offer these vessels the customary hospitalities of the port, which they declined, proceeding soon afterwards to sea. The Peterel remained anchored outside the bar, in consequence of the lateness of the hour or the state of the tide. A boat soon afterwards came to her from the Florida (then known as the Oreto, and under British colours) with a request of which the following account is given by the officer who was then in command of the Peterel:—

"A man, who stated he was the master in command of the Oreto, said he was very shorthanded and wanted to anchor for about two hours to adjust his machinery; but if he anchored outside he had not sufficient crew to weigh his anchor, and begged I would assist him by lending him men. I declined lending him any men, but told him he might hold on astern of the Peterel, and I would give him a line for that purpose.

"About 6·30 or 7 P.M., having seen the Oreto fast, holding on by one of our hawsers, I went down to dinner, and when I came on deck again she was gone.

"I had told the master that she must go out of our way before the tide started.

"This small act of courtesy I considered a duty that I should have extended to any ship, British or Foreign, and until the receipt of your communication, never gave it a second thought; in fact, I must have considered it too trivial to mention in my letter of proceedings which at that time were full of matter of the greatest interest.

"In conclusion, I may remark that the only reason I had for refusing to send men on board was in consequence of the prevalence of yellow fever in the merchant shipping at Nassau, and I had prohibited all communication so far as practicable with them."

Neutral Powers have never been held responsible for violations of their territory committed in remote and unfrequented places, where no effective control could be exercised; and it is certain that, over such a dominion as the Bahamas, no Government could reasonably be expected to exert such a control as to prevent the possibility that acts of this kind might be furtively done in some part of its shores or waters.

The Prince Alfred sailed from Nassau as any vessel intended to run the blockade might have done, while the Florida was still lying in the harbour; and there appears to have been no circumstance within the knowledge of the authorities of the Colony to direct special attention to the nature of her cargo, to disclose her errand, or furnish a reason for detaining her. No complaint on the subject was made before she sailed by the Consul of the United States, though it is now alleged that the purpose for which she went was "notorious" in Nassau. Subsequently, on the 8th September, 1862, when the Prince Alfred was again at the port, the Consul informed the Governor that he had good authority for stating that this vessel had placed the Florida's armament on board her at Green Cay, and that the Prince Alfred's captain was again shipping men to be sent to the Florida. The Governor replied that if sufficient evidence could be placed in the hands of the Attorney-General to substantiate this allegation, he would direct a prosecution to be instituted against the captain of the Prince Alfred or others who might have been guilty of violating the Foreign Enlistment Act. Upon this communication the Consul seems to have taken no steps whatever; and, although it has since appeared that he had previously procured a notarial declaration from some of the men employed on the Prince Alfred, the evidence thus obtained was never communicated or disclosed to the Colonial authorities or to Her Majesty's Government, until February 1865. Captain Maffit had at that time arrived at Nassau in command of the merchant-vessel Owl, which had run the blockade, and the then United States' Consul made an application to the Governor for proceedings against him on the ground that he had enlisted men in the Colony for the Florida in 1862. This application was not received until after Captain Maffit had left Nassau, but the Governor directed the Attorney-General to communicate with the Consul, and the declaration of 4th September, 1862, above referred to (which contained no evidence of enlistment), was then produced for the first time.*

The Arbitrators are already aware that the Florida went from the Bahamas to Cuba, where she endeavoured to ship a crew, and from thence (before making any prize or inflicting any loss on the United States) was carried by her commander into the Confederate port of Mobile, escaping capture through the remissness or incapacity of the officer commanding the blockading squadron; that at Mobile she remained more than four months; that she was there fitted out, and put in a condition for cruizing; and that from thence she commenced her cruize. The crew which manned her during that cruize were enlisted at Mobile, and the greater number of them appear to have been transferred to her from a receiving-ship in that port. The history of this cruize has been briefly told in the British Case. It has been seen that she was admitted, during the course of it, into ports of the British Colonies, of Brazil and France; that at Brest she was suffered to remain during nearly six months repairing and refitting; and that she was ultimately seized and carried away from a Brazilian port by a gross violation of the neutrality and sovereign rights of Brazil.†

On the fact that she was permitted to enter ports within Her Majesty's colonial possessions, the United States have endeavoured to support further complaints and further claims against Great Britain, for which there is no foundation whatever. It was not the duty of the British Government to seize or capture the Florida when cruizing under a commission from the Government of the Confederate States; and the charges of partiality made in respect of this vessel are as groundless as those advanced in the cases of the Sumter and Nashville. It will, however, be for the convenience of the Arbitrators that they should be furnished with a summary account of the hospitalities accorded in British ports during the course of the war to the armed vessels of both belligerents. This will be done in a subsequent section.

With respect to the case of the Florida, Her Majesty's Government submit with confidence to the Arbitrators, not only that negligence cannot justly be imputed to Great Britain, but that (even if this were otherwise) Great Britain could not be held liable for losses sustained by the United States in consequence of the operations of that vessel after she had entered the port of Mobile, had there completed her equipments and enlisted for the first time a sufficient crew, and had afterwards sailed from that port to cruize against the shipping of the United States.

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* Appendix to British Case, vol. i, pp. 82–90.

† Case of Great Britain, pp. 67–78.

The Alabama.

The facts relative to the building, departure, and subsequent arming of the Alabama have been set forth in the British Case with a fulness of detail which renders any additional statements unnecessary; and Her Majesty's Government will here refer to them so far only as may be required for the purpose of correcting erroneous assertions or mistaken inferences in the Case of the United States.

In respect to this ship, Her Majesty's Government does not dispute that, at the time when she sailed from England in July 1862, she was, as regards the general character of her construction, specially adapted for warlike use, nor that the adaptation had been effected within British jurisdiction. The question for the Arbitrators is, whether the British Government had, according to the fair and just sense of those words, reasonable grounds to believe that she was intended to carry on war against the United States, and, having it, failed to use such diligence as any international obligation required to prevent her departure from Great Britain, or to prevent her equipment within its jurisdiction.

In respect of this ship also, as in respect of the Florida, it is insisted by the United States that the material facts proving her true character and the employment for which she was intended were notorious, and therefore either were or ought to have been known to Her Majesty's Government, and that no proof ought to have been required from Mr. Adams. It is insisted, further, that not only proof was required, but "strict technical proof," such as would support a criminal prosecution under the Foreign Enlistment Act. The Arbitrators are also told that, in this case and throughout the war, the British Government and its officers "would originate nothing themselves for the maintenance and performance of their international duties," and "would listen to no representations from the officials of the United States which did not furnish technical evidence" sufficient for the purpose mentioned above.

These assertions are made use of to explain the fact, that, although "before the vessel was launched, she became an object of suspicion with the Consul of the United States at that port, and she was the subject of constant correspondence on his part with his Government and with Mr. Adams," no representation was made respecting her either to the British Government or to its officers at Liverpool until the 23rd June, 1862. Neither the fact which has to be explained, nor the explanation offered for it, appears to be supported by the evidence.

Among the circumstances alleged as proofs of an intention that the vessel should be employed in the Confederate service, are the contract between Bullock and the ship-builder, supposed to have been signed in October 1861, and the asserted facts that Bullock "went almost daily" on board of her, and "seemed to be recognized in authority," and that her officers were in England awaiting her completion, and were paid their salaries monthly at the office of Fraser, Trenholm, and Co., in Liverpool.

For evidence that the Alabama was the subject of constant correspondence between the United States' Consul at Liverpool and his Government and its Minister in London, the Arbitrators are referred to the Appendix to the Case of the United States, "vol. iii, *passim*."* They will discover that, before the date of Mr. Adams' first representation to Earl Russell (23rd June, 1862), she is only thrice mentioned by Mr. Dudley in despatches to Mr. Seward—namely, on the 4th April, 16th May, and 18th June, 1862. On the 27th June he says that he has mentioned her "in two or three notes to the department."† They will not (Her Majesty's Government believes) find any letters addressed to Mr. Adams prior to that on which he founded his representation to Earl Russell, though there probably was such a letter, since she is there said to have been mentioned in "a previous despatch."‡ The constant correspondence, therefore, which is mentioned in the Case did not commence until after the vessel had made her first trial trip, and was nearly ready to go to sea, and a very few weeks before she sailed, though Mr. Dudley's attention had been directed to her in November, 1861. The fact that Bullock "goes almost constantly on board the gun-boat, and seems to be recognized as in authority," first appears in a letter dated 9th July, 1862, addressed to the Collector of Customs at Liverpool; and the Collector is, in the same letter, told that Bullock "is in Liverpool," and what is supposed to be his business there.§ The facts that the contract for the ship was made with Bullock, and that Confederate officers who were intended to serve on board of her were in Liverpool and receiving pay before she sailed, first appear in a deposition of one Yonge, sworn and communicated to Earl Russell, in April 1863.‖

Case of the United States, p. 99.

It has not been shown by the United States that, prior to the time when Mr. Adams

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* Case of the United States, p. 366.
† Appendix to ditto, vol. iii, pp. 1–3; vol. vi, p. 377.
‡ Ibid., vol. iii, p. 5; vol. vi, p. 376.
§ Ibid., vol. iii, p. 18; vol. vi, p. 384.
‖ Ibid., vol. iii, p. 145; vol. vi, p. 435.

laid a representation before Earl Russell, any circumstances proving or tending to prove that the ship was intended for the Confederate States were notorious or generally known at Liverpool, or were or ought to have been known to the British Government or any of its officers, Indeed, beyond a report that one of the workmen in Laird's yard had said so, no fact of this kind is found in any of Mr. Dudley's previous letters. Such a statement by a mere workman would not be evidence in any British Court, nor is it consistent with probability that ordinary workmen in the yard would have any means of knowing or proving the real destination of the ship.

That the vessel was designed for a ship of war was doubtless not difficult to discover, but there was nothing in this to attract special observation. The building of vessels of war for the British Government and for foreign Governments or their agents had for many years formed a large part of the regular business of the great ship-building firm in whose yard she was constructed. It has been publicly stated by Messrs. Laird, and Her Majesty's Government are now in a condition to prove it to be the fact, that shortly before the contract with Bullock was said to have been made, they were asked to send in plans and estimates for gun-boats and a floating battery to the Navy Department of the United States by a person who represented himself, and was believed by them to be authorized by the head of that Department; and being (as they were) commercial men, having only commercial objects in view, they were perfectly ready to have supplied these articles to the United States, if it had been proposed to them to do so on terms which they considered sufficiently profitable.*

The assertion that a particular fact is "notorious" is one, the truth of which there is no possibility of testing. It commonly means no more than that the fact is generally or by many persons believed to be true, which does not prove the truth of it (since a general belief may be, and often is, mistaken), and does not always make it even probable that proof can be obtained. If a general belief prevailed in Liverpool, whilst the vessel afterwards known as the Alabama was in the builder's yard, that she was intended for the Confederate States (and there is no proof whatever that any such general belief did, in fact, exist), this would not have been a reasonable ground for calling on the Government to seize or interfere with a ship which, for aught that was known to the contrary, was the property of private individuals, guilty of no violation of the law.

The phrase "technical evidence" is calculated to mislead. If it means such evidence as might be expected to satisfy an impartial Tribunal that a violation of the law had been committed, it is true that the Government held itself entitled, before seizing the Alabama or any other vessel, to have such evidence in its possession, or to have reasonable grounds for believing that it would be forthcoming before the trial of the case should begin. Open investigation before a Court is the means appointed by law for sifting all accusations and distinguishing ascertainable facts from mere rumour; it is an ordeal that a British Government which, in the exercise of the powers entrusted to it, seizes or interferes with the person or property of any one within its jurisdiction, must always be prepared to encounter, and it is clear that the sufficiency of evidence in an English forum can only be tried by principles recognized in England, as in an Italian, Swiss, Brazilian, or American forum, it must of necessity be determined by principles recognized in those countries respectively. But the assertions, that the British Government, throughout the war, "would originate nothing themselves for the maintenance and performance of their international duties, and that they would listen to no representations from the officials of the United States which did not furnish technical evidence for a criminal prosecution," are not only unfounded; they are opposed to facts stated in the Case and evidence of Great Britain, and even in the Case and evidence of the United States. The Arbitrators have already seen, from the statements laid before them, that every reasonable suspicion, whether communicated through the Minister of the United States or derived from other sources, was immediately made the subject of inquiry; that this was in some instances done where no representation had been received from Mr. Adams; and that on every representation of his, though unaccompanied by evidence, it was done as a matter of course.

It is true, nevertheless, that in cases of this nature neutral Governments ordinarily expect to receive information from the Ministers or Consuls of belligerent Powers resident within their territories. These officials have the keenest incitements to vigilance in their national interest and official duty, and are more likely to be the first recipients of intelligence than the Government or its officers.

This has been the general practice of neutral Governments, and the Arbitrators have

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* Appendix to British Case, vol. v, pp. 204-219.

already seen that it has been followed by the United States. The Government of the United States has expected information to be thus furnished to it, and has expected also the information to be supported by proofs; and, where the proof offered was not satisfactory foreign Ministers and Consuls have been told that they were at liberty to institute proceedings themselves.*

Let us now briefly recall the facts, of which the Arbitrators are already in possession, and which show what the conduct of the British Government and its officers in relation to the Alabama really was.

On the 24th June, 1862, Earl Russell received the first representation made to him respecting the vessel afterwards called the Alabama, then known only by her number in the building-yard (290). In the Case of the United States the Arbitrators are told that Mr. Adams had at this time good reason "to think that it would be necessary to obtain strictly technical proof of a violation of the municipal law of England before he could hope to obtain the detention" of the ship, and that "he thought he had such proof." Mr. Adams did not, however, in his letter furnish or offer any proof at all, and the inclosed letter from Mr. Dudley contained nothing showing or tending to show the purpose for which the

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* The answer of Mr Fish to the Spanish Envoy, in December 1870, has been already referred to above (p. 46.)

"The Undersigned takes the liberty to call the attention of Mr. Lopez Roberts to the fact that a District Attorney of the United States, is an Officer whose duties are regulated by law, and who, in the absence of executive warrant, has no right to detain the vessels of American citizens without legal process, founded not upon surmises, or upon the antecedent character of a vessel, or upon the belief or conviction of a Consul, but upon proof submitted according to the forms required by law."

There are several examples of this in the correspondence of the Government of the United States with Spain and Portugal. (Appendix, vol. iii, p. 95.)

The following letters exchanged between the Spanish Consul at New York and the United States' District Attorney in 1817 affords a convenient instance. (Ibid., p. 119.)

Mr. Stoughton to Mr. Fisk,

"Sir, "*Consulate of Spain, New York, September* 16, 1817.

"Some days ago there arrived in the port of New York an armed brig, proceeding from Norfolk, which I have been very credibly informed is a vessel pretending to have a commission from Venezuela, but whose object in coming into this port was to procure an additional supply of men, wherewith to commit hostilities against the subjects and possessions of the King of Spain. A few days ago I presented to the Collector of the Port of New York an affidavit of a man named John Reilley, stating that he had been requested to enlist on board of a vessel, which was represented to him to be the privateer schooner 'Lively,' bound to Amelia Island, to join General M'Gregor to invade the territories of His Catholic Majesty.

"I am now informed that the brig above mentioned is the vessel alluded to, Reilly having either been mistaken in the name, or designedly deceived by the agents of the privateer. I now inclose the affidavit of John Finegan, by which you will perceive that the officers of the above brig (whose name is the 'American Libre,' commanded by Captain Barnard) are enlisting, and have enlisted, men in this port to proceed against the Spanish possessions. I have caused application to be made to the Collector, who doubts the extent of his authority in interfering with this vessel. Now, as there must be provisions in the laws and Treaties of the United States vesting an authority in some of its officers to prevent the equipment of vessels, and the enlistment of men, in the United States, to proceed against a foreign nation, at peace with the United States, I make this application to you, most urgently requesting you to take whatever measures may be necessary immediately in order to prevent the departure of the above vessel, at least until she shall give bonds that she will not commit hostilities against Spanish subjects. The vessel, it is said, will sail to-morrow morning.

"Indeed, if an inquiry were instituted, I am induced to believe the above brig will be found to be a pirate.

"I have, &c.

(Signed) "THOMAS STOUGHTON."

Affidavit of John Finegan.

"State of New York, ss. "*September* 16, 1817.

"John Finegan, at present in the City of New York, being duly sworn, saith, that he was requested by a man, who is represented to be the Commissary of the vessel next mentioned, to go out in the 'Patriot,' brig, now lying at the Quarantine Ground; that the destination of the said vessel is to fight against the Spaniards; that the deponent was told that on his arrival in Spanish possessions he was to join the land service of the Patriots; that deponent knows of five persons who have been engaged in like manner, who are about to proceed on board the said brig; that deponent was told that as soon as he gets on board he will receive his advance; that officers are at present employed in the City of New York in looking out for men, and endeavouring to enlist them to proceed in the said vessel.

his

(Signed) "JOHN FINEGAN ⋈

mark.

"Sworn this 16th day of September, 817, beiore me:
SAMUEL B. ROMAINE."

Mr. Stoughton to Mr. Fisk.

"Sir, "*Consulate of Spain, New York, September* 17, 1817.

"I inclose the deposition of John Reilley, relating to the privateer brig, about which I yesterday had the honour to address you. You will perceive by the affidavit that officers belonging to that brig are openly employed in this city in recruiting and enlisting men to join with General M'Gregor, and invade the possessions of the King of Spain.

vessel was intended beyond some hearsay statements reported to come from persons who could not be compelled to give evidence, and an expression of his own opinion that "there was not the least room for doubt about it."

On the 25th June Her Majesty's Government ordered inquiry to be made on the spot. At the same time the two letters were laid before the Law Officers of the Crown. The latter reported—

"That, if the representation made to Her Majesty's Government by Mr. Adams is in accordance with the facts, the building and equipment of the steamer in question is a manifest violation of the Foreign Enlistment Act, and steps ought to be taken to put that Act in force and to prevent the vessel from going to sea.

"The report of the United States' Consul at Liverpool, inclosed by Mr. Adams, besides suggesting other grounds of reasonable suspicion, contains a direct assertion that the foreman of Messrs. Laird, the builders, has stated that this vessel is intended as a privateer for the service of the Government of the Southern States; and, if the character of the vessel and of her equipment be such as the same Report describes them to be, it seems evident that she must be intended for some warlike purpose.

"Under these circumstances we think that proper steps ought to be taken, under the direction of Her Majesty's Government, by the authorities of the Customs at Liverpool, to ascertain the truth, and

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"I need not remind you that, by the existing laws of the United States these enlistments are unlawful, and that not only the vessel on board of which they are to embark is liable to seizure and forfeiture, but that the captain and the officers thereof, who are engaged in this business, are liable to a heavy fine and imprisonment. As these are flagrant violations of the laws of the United States, and calculated to produce serious injury to the possessions of His Majesty, and to the property of his subjects, I flatter myself that you will take, without delay, such steps as may be necessary to put a stop to these proceedings.

"I have, &c.
(Signed) "THOMAS STOUGHTON."

Deposition of John Reilley.

"State of New York, ss., City of New York, ss. "*September* 9, 1817.

"John Reiliey, at present in the City of New York, mariner, being duly sworn, saith, that some days ago deponent was requested to embark on board of a vessel which was said to be laying at the Narrows, in the Bay of New York, for the purpose of going to join General M'Gregor, and to fight against the Spaniards; that after he arrived at Amelia Island he might either join the land service or the naval service; that deponent would be paid as soon as he got on board; that several persons were engaged in looking out for recruits to proceed upon the same service, and many men were spoken to for the purpose. Deponent was then informed that the vessel was the privateer schooner "Lively," but has since learned that it was a mistake, and that the vessel in question is the Patriot brig "Americano Libre," Captain Barnard, which is lying at the Quarantine Ground, and is armed with several large guns and many men; that several persons who are officers, captains, lieutenants, and so forth, are at present employed in recruiting men to join that service, and proceed in the said brig to Amelia; that many hands have already been bespoken, and are now waiting for money which has been promised to them; that the offers made to them are to give them 8 dollars a month and clothing, together with 10 or 12 dollars in advance. Deponent supposes that the officers above-mentioned were in treaty with about twenty persons, who were to go on board as soon as their advance was paid to them, and which the said officers told them would be during the course of the day; among the officers there is one who is called a General. That the above men were told, in deponent's presence, by the officers who were enlisting them, that they were principally wanted to join the land service against the Royalists. And further the deponent saith not.

(Signed) "JOHN REILLY.

"Sworn this 19th day of September, before me,
"FRANCIS R. TILLON, *Notary Public.*"

Mr. Fisk to Mr. Stoughton.

"Sir, "*New York, September* 17, 1817.

"I have duly received your notes of yesterday evening and of this day, and have referred to the statutes providing for the punishment of the offences stated. It is not a case, from the evidence mentioned, that would justify the Collector in detaining the vessel; the aggression is to be punished in the ordinary mode of prosecuting those who are guilty of misdemeanors. Oath is to be made of the facts by the complainant, who enters into a recognizance to appear and prosecute the offenders before any process can issue. This oath being made, and recognizance taken, the Judge of the Circuit Court will issue a warrant to apprehend the accused, and bring them before him, to be further dealt with according to law. When apprehended, it is the province of the Attorney of the United States, to conduct the prosecution to judgment. I have no authority to administer an oath, or to issue a warrant, nor have I the power to issue any process to arrest and detain the vessel in question, unless by the direction of an executive officer of the United States. By the reference you have furnished, the parties complained of are to be prosecuted either under the 4th section of the Act of Congress passed on the 3rd of March, 1817, or under the 2nd section of the Act passed 5th June, 1794. By adverting to these statutes, it will be seen, that the vessel is not liable to seizure for the act of any person enlisting himself to go on board, or for hiring or retaining another person to enlist; the punishment is personal to the offenders, and those who disclose the fact, on oath, within thirty days after enlisting, are protected from prosecution. The offenders are to be arrested and prosecuted in the manner I have stated. I beg you to be assured, Sir, that it is not from a disposition either to shrink from the performance of my duty, or to decline interfering to defeat any illegal enterprise against the subjects or possessions of a Power with whom the United States are at peace, that I have stated to you the embarrassments I must encounter in attempting a compliance with your request upon any information with which I am furnished. If it is in your power to procure the names of the parties, and the evidence upon which a prosecution for a misdemeanor can be founded, I will readily co-operate with the proper authorities in having every offender arrested and brought to justice. It is impracticable for me, or any other officer of the United States, to take any legal

that, if sufficient evidence can be obtained to justify proceedings under the Foreign Enlistment Act, such proceedings should be taken as early as possible. In the meantime Mr. Adams ought, we think, to be informed that Her Majesty's Government are proceeding to investigate the case; but that the course which they may eventually take must necessarily depend upon the nature and sufficiency of any evidence of a breach of the law which they may be enabled to obtain; and that it will be desirable that any evidence in the possession of the United States' Consul at Liverpool should be at once communicated to the officers of Her Majesty's Customs at that port."*

On the 4th July the results of the inquiry instituted at Liverpool by the Customs Department were communicated to Mr. Adams, with a suggestion that he should instruct "the United States' Consul at Liverpool to submit to the Collector of Customs at that port such evidence as he may possess tending to show that his suspicions as to the destination of the vessel in question are well founded."†

If Mr. Adams, or the Consul from whom he derived his information, was at this time possessed of evidence as to the intended employment and real character of the ship, the time had now arrived when it ought to have been produced without delay.

Five days afterwards, on the 9th July, the Consul wrote a letter, received on the 10th, which purported to convey "all the information and circumstances which had come to his knowledge," to the Collector of Customs.‡ The contents of this letter, when examined, will be found to consist partly of one or two alleged facts (not proved), tending to connect Bullock with the vessel; partly of statements or admissions said to have been made by various persons to third parties, and to have been by them reported to the Consul. The persons to whom these statements or admissions were ascribed were two officers of the Sumter, who had passed through Liverpool two months before; a foreman then or previously employed in the shipbuilders' yard, and not designated by name; and "a youth named Robinson," who was understood to be at "a school in London." Mr. Dudley had not himself seen any of these persons; he had only heard from others (whose names he said he could not disclose), that they had made the statements or admissions attributed to them. His information, therefore, consisted in reality of reports, received from anonymous persons, of statements alleged to have been made by others who could not be found, or who, if found, could not have been compelled to give evidence, since the evidence would have tended to criminate themselves. Of Bullock nothing was at this time known to Her Majesty's Government, and the Consul, although he asserted that Bullock was a Confederate officer sent over to England for a particular purpose, furnished no evidence of this, nor offered to furnish any.

Mr. Dudley was therefore informed by the Collector that the officers of the revenue would not be justified in acting on the statements contained in his letter, unless they could be substantiated by evidence.

On the 21st July, eleven days after the Collector's reply, and a month after the time when (as is alleged), Mr. Adams thought he had in his possession "strictly technical proof" of a violation of the law, some evidence was produced for the first time, and laid before the Collector by the Consul. This evidence consisted of six depositions, of which only one, purporting to be sworn by a man named Passmore, was material to the question, and legally admissible.§ It has already been observed that, to rely on evidence of this kind, proceeding from a single witness, without corroboration and without inquiry into his character and general credibility, would, according to judicial experience in England (and, it may be added, in the United States likewise, and probably in other countries), have been very unsafe in a case of this nature.‖

The Consul was, however, informed that it was competent for him, if he should think fit, to institute at his own risk a prosecution against the persons supposed to be concerned in the alleged violation of the law.¶

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measures against aggressors, upon the indefinite statement of certain persons being concerned in an illegal transaction. Since the receipt of your notes, I have had an interview with the Collector, and we are unable to discover any other legal course of proceeding in this case than that adopted in the ordinary cases of misdemeanors.

"I have, &c.

(Signed) "JONATHAN FISK."

The Spanish Consul rejoined by a warm remonstrance. The expedition appears to have been permitted to sail unmolested.

* British Case, page 83; Appendix, vol. i, page 181.

† British Case, page 84; Appendix, vol i, page 184.

‡ Appendix to Case of the United States, vol. iii, page 17; vol. vi, page 383.

§ Ibid., vol. iii, p. 21; vol. vi, p. 391.

‖ British Case, page 91.

¶ Appendix to Case of the United States, vol. iii, p. 21; vol. vi, p. 396. Reference has already been made above (page 82), to the answers given in a like sense by Mr. Fish, to the Spanish Minister in December 1870 and by Mr. Fisk to the Spanish Consul in 1817.

In the Case of the United States the Arbitrators are told that the depositions submitted on the 21st, were "conclusively passed upon" by Her Majesty's Government.* This is a misapprehension, if it is meant that they were accepted by the Government as conclusive. What the Government accepted as sufficient, was not the incomplete and scanty evidence of the 21st, but the same evidence strengthened and completed by the additional depositions of the 23rd and 25th.

Case of the United States, p. 101.

On the 23rd July two further depositions were furnished to the Board of Customs.† An additional deposition was received on the 25th July.‡ On Tuesday, the 29th July, the Law Officers reported their opinion that the evidence was sufficient, and that the vessel ought to be seized.§ This opinion was unfortunately given too late, the vessel having put to sea on the same morning, under the circumstances stated in the British Case.‖

We see then, that although, according to the statements made in the Case of the United States, this vessel had been an object of suspicion and scrutiny to the Consul ever since November 1861; although he had for months believed that she was intended for the Confederate Government; although she had been, as is alleged, the subject of constant correspondence with his official superior and with Mr. Adams; although she had within his knowledge been gradually advancing to completion, had made her trial trip, and was beginning to get ready for sea; and although Mr. Adams knew that evidence such as could be produced in a Court of Law, not only of her adaptation for war, but of her being intended to be employed in hostilities against the United States, was required to justify a seizure: notwithstanding all this, no evidence whatever proving or tending to prove such an intention was produced to the British Government or its subordinate officials till the 21st July, eight days before the vessel sailed, and at a time when it was reported that she might leave at any hour; and what was then furnished required to be strengthened by additional evidence, part of which was delivered on the sixth, and the remainder on the fourth day before her departure. It is clear beyond controversy that this long and hazardous delay on the part of the officials of the United States in this country must have been due to one of two causes: either to a want of due diligence in procuring the evidence necessary to verify the suspicions which they entertained, or to their inability to procure it. The second of these explanations, which is confirmed by Mr. Dudley's complaints of the difficulty experienced in inducing any witness to come forward, is probably the correct one. But, in either case, what becomes of the charge of gross and culpable negligence against the British Government? If Mr. Dudley, whose business it was to find out the truth of a suspected enterprise so dangerous to his country, could get no evidence of it until too late, why is it imputed as gross negligence to the officers of the Government, that they, without his means of information, were not more successful? If he could, why is the penalty of his negligence to be paid by the British nation?

Up to this point then, it is clear that there is no reasonable ground for the charges brought by the United States against Great Britain. If those charges are to be supported in any way, they must find their only support in what was done or omitted to be done afterwards. That the question whether the evidence was credible and sufficient to sustain a seizure was one on which the British Government had a right, before acting, to consult its official legal advisers, cannot be denied. It was clearly and eminently such a question. Nor does it admit of denial that the evidence was actually referred, as soon as it was received from time to time, by the Government to its advisers for their opinion; nor that, if any reasonable doubt existed, the Government and its advisers were justified in taking reasonable time for consideration.

The charge of gross negligence, then, resolves itself, when tested by examination, into this and no more—that, the evidence not having been delivered till within a few days of the sailing of the ship, and then in successive instalments sent almost from day to day, a little more time than may now perhaps be thought to have been absolutely necessary was consumed in obtaining the advice and forming the conclusion on which the Government ultimately acted.

A circumstance has been already mentioned, of which Mr. Adams was informed at the time, as having occasioned some little delay.¶ Nor ought it to be forgotten that the sole

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* Page 371.

† Appendix to British Case, vol. i, p. 194. ‡ Ibid., p. 198. § Ibid., p. 200.

‖ Some stress is laid in the Case of the United States (pp. 368, 374), on a statement in a report by the Commissioners of Customs to the Treasury, that the Revenue Officers at Liverpool should "watch" the ship. This is construed into a promise to Mr. Adams himself that she should be watched to prevent her departure; and he is said to have relied upon it, and to have been indignant when the authorities "failed to redeem their voluntary promise." Mr. Adams, however, knew well that, although the ship might be "watched" by the officers to ascertain whether she took arms on board (the context shows that this was meant), nothing but an actual seizure could legally prevent her from sailing. Pp. 100, 102.

¶ The illness of the Queen's Advocate: British Case, page 118.

facts which were alleged, and as to which evidence was offered, and for preventing which Her Majesty's Government was solicited to interfere, were the fitting out for sea in the neutral port of a vessel specially adapted by her construction for war, and built as a commercial transaction to the order of an agent of a belligerent, and her apprehended departure, unarmed, for an unknown destination, which might be a port of the Confederate States. Of arrangements for arming her nothing was known to the officials of the United States, and nothing was brought to the knowledge of Her Majesty's Government; and they are now informed by her builders, Messrs. Laird (who would, if necessary, give evidence to that effect before the Arbitrators), that they also were entirely ignorant of those arrangements, and that they believed the vessel to be intended to run the blockade. In the opinion of the Government and its advisers the adaptation of this vessel for war, with a view to her employment in the service of the Confederate States, would, if proved, have been a breach of the Foreign Enlistment Act; but this was not established by authority; it was a point on which high legal opinions were known to differ; and it was the more necessary that the evidence should be clear.

When the matter is reduced to this point, we see that it is one upon which an adverse judgment cannot reasonably be founded by a Court of International Arbitration. Whether the evidence furnished was sufficient—at what time it became sufficient (taking into account the principles of English law, by which the Government and its advisers were bound)—and whether the conclusion at which the Government arrived was or was not deferred a little too long by a reasonable doubt or an accidental delay, are questions as to which such a Court might, perhaps, find it not easy to form a clear and decisive opinion. The British Government conceives, however, that it is not upon grounds such as these that a grave charge of neglect of international duty ought, when raised, to be decided. The standard of international obligation, which a decision adverse to Great Britain on such grounds would assume, has never heretofore been applied to or acknowledged by any Government; and it needs no argument to show that the establishment of it would be a matter of serious consequence, not to maritime States alone, but to the general peace and tranquillity of nations.

The same observations apply with still greater force to the complaints made by the United States of some petty mistake which possibly may have been made, or some small defect of promptitude in decision or action which may possibly have been exhibited, by subordinate officers at Liverpool, after the departure of the vessel. At no time after she sailed was there more than a bare possibility that by the utmost promptitude, aided by good fortune, she might have been seized whilst in British waters. It appears incredible that the United States should mean seriously to contend that, because a subordinate revenue officer hesitates when in doubt to assume a responsibility, or writes to his superior by post instead of communicating by telegraph, a grave international injury has been perpetrated and liabilities incurred such as they now seek to establish. It is evident that on such complaints, were they fit to be entertained, no just conclusion could be formed without a minute knowledge of the attendant circumstances, such as is now impossible to the Arbitrators and unattainable even by Her Majesty's Government. How little support is to be found in the history of the United States themselves for the application of so rigorous a standard has been sufficiently shown in an earlier portion of this Counter-Case. Indeed, we need not go beyond the facts immediately before us. Is the Government of the United States willing to be charged with gross negligence on the ground that the captain of the Tuscarora was lying idle at Southampton, or sailing in St. George's Channel, when he ought to have been off the Mersey?

Her Majesty's Government forbear, therefore, to detain the Arbitrators by an examination of the minor inaccuracies which occur in this part of the Case, and will refer only to one or two of them. It is said that the Collector knew, on the 30th, of an "admitted recruitment" of men, and that the Commissioners of Customs knew of it on the following day, and "took no notice" of it.* There was, however, no admitted recruitment in the sense of an unlawful enlistment of men in the Port of Liverpool. There was nothing to show that the men were not hired for the mere purpose of navigating an unarmed vessel, and it has since proved that they really were so. No enlistment took place until after the vessel reached the Azores, when some agreed to take service and some refused.† If, therefore, they had been taken before a magistrate at Liverpool, they must have been released. It is said that the revenue officers at Liverpool permitted the ship to remain unmolested in British waters during nearly two days, when they were, or should have been, cognizant of

Case of the United States, p. 102.

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* Case of the United States, p. 377.

† See the affidavit of Redden, Appendix to Case of the United States, vol. vi, p. 422.

it. Whither she had gone was, in fact, quite unknown, until the master of a tug-boat reported that she had been cruizing off Point Lynas, about fifty miles from Liverpool. It is said that at the time when this report was received the Collector had received orders to stop the vessel. If this was so, he had not the means of immediately seizing a ship fifty miles away, off the coast of Wales. It is said that her departure from the Mersey was "hastened by the illicit receipt of intelligence of the decision of the Government to stop her." It is difficult to understand how this could have been the case, since the decision of the Government to stop her was not formed till after the report of the Law Officers, which was only received on the 29th; and, if it had been so, the British Government could never be held responsible for the treachery of some unknown subordinate, who may have become informed of their decision, or may have anticipated that it would be made.

Her Majesty's Government maintains that claims in respect of the Alabama must be supported, if at all, solely and entirely by a clearly ascertained failure of duty, for which the Government itself can justly be held responsible, and that the failure of duty must be such as can with propriety be made the subject of a serious international complaint.

To found a complaint or claim, wholly or in part, on the asserted fact that a Government would not act against persons or property within its dominions without "strict technical evidence," either means nothing, or means that the rules which civilized States have found necessary in the domestic administration of justice, for the protection of private rights and of persons wrongfully accused, are to be set aside in cases of international controversy. International law would then become a pretext, not only for interfering with the internal arrangements of different countries in matters of legal procedure, but for drawing back society to the use of those less safe means for the enforcement of rights, which, in the course of its progress, it has found reason to exchange for other and more equitable means.

To found a charge of neglect on the lapse of so short an interval as occurred in the case of the Alabama between the production of evidence and the decision that it was sufficient to act upon, is to lay down an impracticable standard of human conduct. It is a demand that the conduct of a Government, with its various Departments, with modes of action which are of necessity methodical, and more or less complex, shall proceed with a mechanical precision which is not applicable to the practical business of life. Where nice considerations of right, as between parties having opposite interests, have to be weighed, the application of such a principle is palpably unreasonable; yet on what other principle can it be maintained that the time taken between Friday the 25th and Tuesday the 29th July for the joint action of the Foreign Office and the Law Officers was so plainly excessive that it may justly be made a ground for formal condemnation? Does it not rather carry with it presumptive evidence of good faith?

As to the subsequent arming of this vessel in the waters of the Azores, Her Majesty's Government is content to refer the Arbitrators to the statements contained in the British Case. They are told indeed, in the Case of the United States, that she was "armed within British jurisdiction,"—which is explained as meaning that the armament intended for her was sent from the same port as the ship herself. It is added that "the British authorities had such ample notice that they must be assumed to have known all the facts." If by this it be meant, that the Government or its officers had any notice of the dispatch of the Alabama's armament, the fact is otherwise; if the meaning be that, because they knew of the building of the ship, they must be assumed to have known the arrangements for arming her (of which they, as well as the Minister and Consul of the United States, were in fact totally ignorant), this, to say the least, would be a presumption of a very strange and unusual kind.

As to this point, it is enough to repeat here what was said in the Case of Great Britain. The Alabama sailed from England wholly unarmed, and with a crew hired to work the ship, and not enlisted for the Confederate service. She received her armament at a distance of more that 1,000 miles from England, and was armed for war, not within the Queen's dominions, but either in Portuguese waters or on the high seas. The guns and ammunition, which were put on board of her off Terceira, had been procured and exported from England in an ordinary merchant-steamer, which loaded them as cargo and sailed with a regular clearance for Nassau. The clearance and departure of this steamer presented, so far as Her Majesty's Government is aware, no circumstance distinguishing her from ordinary blockade-runners. No information was ever given or representation made to the Government as to this ship or her cargo before she left British waters; nor does it appear that the errand on which she was employed was known to or suspected by the officials of the United States. But, even had a suspicion existed that her cargo was exported with the intention that it should be used, either in the Confederate States or elsewhere, in arming a vessel which had been unlawfully fitted in England for warlike employment, this would not

have made it the duty of the officers of Customs to detain her or have empowered them to do so. Such a transaction is not a breach of English law; nor is it one which the British Government was under any obligation to prevent. Whether the cargo was sent from the same port as the ship or from a different port, and by the same or different persons, is manifestly immaterial for this purpose. The distinction is plainly not such as to create in the one case a duty which would not arise in the other.

The Alabama was commissioned by the Government of the Confederate States, and officered by American citizens. Of the crew, a considerable number were British subjects, who were induced by persuasion and promises of reward to take service in her when she was off Terceira. Others were American citizens, and the proportion which these bore to the rest increased during her cruize.

Her Majesty's Government refrains, in the case of this vessel, as in that of the Florida, from pursuing in this place the complaints made respecting the subsequent admission of her into some of the Colonial ports of Great Britain. It is said, indeed, in the Case of the United States, that Earl Russell promised Mr. Adams to send orders to Jamaica (which she visited in January 1862) to detain her for a violation of British sovereignty, and that this promise was not kept; and, that "Great Britain did not, as Earl Russell had promised, send out orders for her detention," is one of the grounds on which the United States ask an award against this country. Earl Russell gave no such promise. In a conversation with Mr. Adams, immediately after she left Liverpool and at a time when her immediate destination was unknown, he is stated to have told the latter that he "should send directions to have her stopped if she went, as was probable, to Nassau." Orders to this effect were in fact sent. But the contingency contemplated as probable did not occur; the ship, as has been seen, did not go to Nassau, but to Terceira; and, when she first appeared in British waters, she was a commissioned ship of war, and had been received as such in a French port, as she afterwards was (notwithstanding the remonstrances of the United States) in ports of Brazil. It was not the duty of the British Government, or of any other neutral Power, to cause her to be seized and detained when she entered its ports in that character. She was received there under precisely the same conditions as vessels of war of the United States, and the imputation of partiality which is cast, in the Case of the United States, on the Governor of the Cape Colony, is entirely devoid of foundation. Nor is it necessary to enter into the complaints laid before Her Majesty's Government by Mr. Adams respecting acts done by the commander of the Alabama on the high seas. Mr. Adams does not seem to have remembered that a sentence of condemnation is not necessary where there is no neutral interest in ship or cargo; nor that the practice of using false colours to approach an enemy is regarded in all navies as allowable, provided the true flag be hoisted before a shot is fired. Her Majesty's Government is not, however, concerned to defend the conduct of the captain of the Alabama, when out of its jurisdiction, in these or any other particulars. Whatever it may have been, Great Britain is not responsible for it; and if it furnished any reason against the admission of his ship into British ports, it would have been equally valid against her reception in the ports of France and Brazil.

It will have been observed from the foregoing statement, as well as from the fuller narrative which Her Majesty's Government has previously presented to the Arbitrators, that the cases of the Florida and Alabama differ from one another in various more or less important particulars. But Her Majesty's Government again submit that neither in respect of the Alabama nor in respect of the Florida is Great Britain chargeable with any failure of international duty for which reparation is due from her to the United States.

PART VII.

The Georgia and Shenandoah.

PASSING to the cases of the Georgia and Shenandoah, the Tribunal has next to deal with two vessels, as to both of which it is not only clear that the British Government had not, before they respectively departed from its jurisdiction, any reasonable ground to believe that they were intended to cruize or carry on war against the United States; but it is also clear that they were not within its jurisdiction armed, fitted out, or equipped or specially adapted, either wholly or in part, to warlike use.

The Georgia.

The Georgia.

The Georgia, as the Arbitrators are aware, was a vessel built at Dumbarton, in Scotland, and sent to sea from the port of Greenock in April 1863. She had undergone, when completed, the customary surveys by the proper officer of the port of Glasgow, and is described by him as appearing to be intended for commercial purposes. Her framework and platings were of the ordinary sizes for vessels of her class. The tide-surveyor at Greenock, in like manner, "saw nothing on board which could lead him to suspect that she was intended for war purposes." The collector at Greenock adds, from his own observation, that she "was not heavily sparred; indeed, she could not spread more canvas than an ordinary merchant-ship."* In short, she was built, fitted up, and rigged as a ship of commerce, and not as a ship of war. Indeed, when the endeavour was afterwards made to employ her as a cruizer, she was found upon trial to be not adapted for this purpose, and she was for that reason dismantled and sold before the end of the war, after having been at sea altogether about nine months. She was registered under the name of the "Japan," in the name of a Liverpool merchant, and was entered outwards, and cleared in the customary way, for a port of destination in the East Indies. She was advertised at the Sailors' Home in Liverpool as about to sail for Singapore; and her crew were hired for a voyage to Singapore or some intermediate port, and for a period of two years. The men, when they were hired, believed this to be the true destination of the ship, and her voyage to be a commercial one; and they appear to have continued under this belief until after the vessel had arrived off the coast of France. The number of her crew appears, from depositions furnished on the part of the United States, to have been about fifty.† In the Case of the United States a description of the ship is given, without referring to the evidence on which it is founded. She is described, in one of the depositions obtained and produced by Mr. Adams, as "an iron vessel, very slightly built."† There is no reason whatever to believe that when she sailed from Greenock she had a magazine, or that her cabins or interior fittings were of any unusual strength. She had on board joiners who were fitting up her cabins when she left her anchorage. She was, therefore, when she left this country, a ship to which the first of the three Rules mentioned in the VIth Article of Treaty would not apply; nor was she a ship with which Her Majesty's Government were under any obligation to interfere, according to any known rule or principle of international law.‡

The assertion is repeated in this case that the service for which the vessel was constructed was "notorious."§ In proof of this the Arbitrators are furnished with two anonymous letters published in an English newspaper in February 1863, one of which contained no reference whatever to this or any vessel building or supposed to be building for the Confederate States, whilst the other declared that upwards of fifty were being built for the Government of those States, and mentioned a "fine screw-steamer," lying in the Clyde and called the Virginia, as reported to be partly owned by the Confederates and

Case of the United States, pp. 107, 111.

* Appendix to British Case, vol. i, p. 404.

† Appendix to Case of the United States, vol. vi, p. 512.

‡ British Case, p. 152.

§ Case of the United States, pp. 392, 408; Appendix to ditto, vol. vi, p. 503.

partly by individuals at Nassau; adding, "it is publicly announced that she is soon to be employed on the line between Nassau and Charleston." An anonymous letter mentioning a report that a particular vessel was destined for a blockade-runner, and was partly owned by the Confederate Government and partly by private individuals at Nassau, is thus adduced as proof that it was notorious that the same vessel was intended for a Confederate cruizer. "Her destination," it is added, "rendered it certain" that she was to carry on war against the United States. Her destination, as we have seen, was Singapore.

In this case again, as in others, the inquiry arises why no information of an enterprise described as having been so "notorious," and of such serious consequence to the United States, was furnished to Her Majesty's Government or to the local authorities by the United States' Consul on the spot, or by Mr. Adams. The latter, it subsequently appeared, had "long been in possession of information about the construction and outfit" of the ship; but "nothing had ever been furnished to him of a nature to take proceedings upon." At all events he remained perfectly silent till nearly a week after the vessel had sailed; and the Arbitrators are now asked to decide that because the British Government did not take, with respect to a vessel about which it was in entire ignorance, proceedings which Mr. Adams himself knew of no facts to support, Great Britain is guilty of a failure of international duty and responsible for the consequences of it to the United States.

It is next made a matter of complaint that, when informed that the Georgia had sailed, the Government did not instantly send a ship of war in pursuit of her. "The sailing and destination of the Japan," it is said, "were so notorious as to be the subject of newspaper comment. No time therefore was required for that investigation. It could have been very little trouble to ascertain the facts as to the Alar" (the merchant-vessel which carried out for her arms, officers, and men). "The answer to a telegram could have been obtained in a few minutes. Men-of-war might have been dispatched on the 8th from Portsmouth and Plymouth to seize these violators of British sovereignty." "This was not done." The sole evidence produced in proof that the sailing and destination of the Japan were notorious on the 8th of April is an extract from a Liverpool paper published on the 9th, which mentioned a report that the vessel was intended for the Confederate Service, and had sailed "for unknown destinations."

Case of the United States, p. 108.

If recourse had been had to the Navy, "it is probable," the Arbitrators are told, "that the complaints of the United States might not have been necessary."* They might not have been necessary if Mr. Adams had communicated in good time such information as he possessed, instead of keeping it undisclosed until six days after the sailing of the Georgia, and more than three days after the departure of the Alar, and if that information had tended to prove an actual or contemplated violation of the law. As it was, the intelligence of the departure of the Georgia, and the assertion (a bare assertion unsupported by any proof at all) that she was intended for the Confederate Service, were first communicated to the Government on the 8th, coupled with the statement that "her immediate destination is Alderney, where she may be at this moment."† That the Alar had sailed from Newhaven for Alderney and St. Malo was at this time known to the Board of Customs, though not known at the Foreign Office. "No investigation," the Case proceeds, "was necessary." Mr. Adams' information ought to have been at once assumed to be right—though it was very frequently wrong, and indeed was materially erroneous in the present instance. The cargo and destination of the Alar might have been ascertained by telegraph "in a few minutes." Months had been insufficient, apparently, to enable Mr. Adams to acquaint himself with facts "of a nature to base proceedings on;" Her Majesty's Government is to be allowed only "a few minutes." The Alar, assumed to be putting to sea on a secret and illicit errand, would naturally, it appears to be supposed, leave the particulars of her cargo and true destination in the possession of the revenue officers at Newhaven. A vessel of war dispatched from Portsmouth or Plymouth on the 8th to *Alderney* (the place designated by Mr. Adams) would, it is further assumed, have been able to find the Georgia at *Ushant*, which is not less than 150 miles off and in a very different direction, and to find her before she left that coast on the 9th or 10th. Her Majesty's Government must be permitted to observe that a celerity and activity of movement are by this hypothesis attributed to Her Majesty's ships, which would have been nothing less than extraordinary. But it seems, besides, to be forgotten that Ushant and its territorial waters are not within the dominions of Her Majesty. They are close to the coast of France and within the dominions of that Power; and, even if it had been the duty of the British Government to institute a pursuit on the high seas of vessels not shown to have committed any offence either against British law or against the law of nations, a seizure of them in French waters would have been as plain a violation of the sovereignty of France, as that of the Chesapeake in December 1863

* Case of the United States, p. 398.

† Appendix to ditto, vol. vi, p. 509

within the waters of Nova Scotia, by a United States' cruizer, was a violation of the sovereignty of Great Britain. That an error had been committed in the latter case was acknowledged by the United States: the British Government would certainly decline in a like case to commit a similar error.

But the Arbitrators are already aware that the British authorities did the very thing which they were accused of not having done. Earl Russell did not order inquiries only; he did order action. A ship of war was in fact sent to Alderney, not indeed from Portsmouth or Plymouth, but from Guernsey, to prevent any attempt which might be made to violate the Foreign Enlistment Act within British waters; only, however, to find that Mr. Adams' information as to the immediate destination of the suspected vessel had been wrong.

Having delayed till too late giving any information to the British Government about this ship, and having then given information which was erroneous, the United States would fain have the Arbitrators assume that it was the duty of this Government to employ its naval forces in searching for and pursuing her on the high seas, and even in foreign waters. There is no pretence for the suggestion of such a duty. No such duty has been acknowledged by the United States themselves, nor by any other Power. Yet it is impossible to deny that the British Government did act in this matter with promptitude and alacrity, scanty though the information was and quite unsupported by proof, and too late though it probably was for any effectual measures.

Unable to establish against Great Britain any failure of duty in this respect, the United States attempt to found a claim on the facts that no punishment which appears adequate to the Government of the United States was inflicted on the persons concerned in fitting out the Georgia, and that she continued for some months to be registered as a British-owned ship. It is true that these arguments are evidently advanced with little confidence, but that they should be suggested at all is to Her Majesty's Government a matter of some surprise.

Her Majesty's Government is compelled to ask, whether it is seriously contended by the Government of the United States that the Georgia, "though nominally cruizing under the insurgent flag and under the direction of an insurgent officer," was all the time really controlled and owned by a British subject. Is it not, on the contrary, certain, that even whilst Bold's name remained on the register as that of her nominal owner, the real ownership and control was in the Confederate Government? Does the Government of the United States seriously contest this? Has it any serious doubt of it? Her Majesty's Government is unable to believe that it has. But even could it be shown that Bold was the actual, instead of being the nominal, owner; that the Confederate flag was (as seems to be suggested) merely used to cover the acts of Bold and his agent, the Confederate officer; and that the ship was therefore in truth and fact piratical, this would impose no responsibility on the British Government. It cannot be maintained on the part of the United States that a Government is to be held responsible for acts, whether of war or of piracy, done out of its jurisdiction and beyond its control, on the ground that the vessel by whose instrumentality they were committed was either nominally or really the property of one of its subjects. Certainly there is no Power in the world by which this proposition has been more explicitly or resolutely denied.

But this is not all. If the argument be (as it is) untenable on general principles, what are we to think of it when we find that the very ship, which is asserted to have been British all along, was actually captured after she left Liverpool, and when plying as a merchant-ship, on the ground that she was a Confederate ship of war, and could not, even by a regular sale in a neutral port, pass into the possession of a British owner and into the British mercantile marine? She is not British when the question is, whether she is to belong to a neutral who has bought and paid for her, or to be seized and appropriated by the United States. She becomes British again (but not, so far as appears, for the benefit of her former British owner) when it is supposed to be possible to found on her alleged British character a claim against Great Britain.

Of the complaint that she was suffered to remain in port for the purpose of being dismantled and sold, it is only necessary to say that, even could this be shown to be (what it clearly was not) an erroneous or improper indulgence on the part of the British authorities, it was not a failure of duty from which any injury arose to the United States; it could not, therefore, be made the foundation of a claim, and is not properly within the scope of the reference to the Tribunal.

Her Majesty's Government has never before heard it suggested, that a Government which forbears to institute prosecutions against all the persons who may have been concerned in fitting out or manning a particular vessel for the naval service of a belligerent, or may themselves have served on board of her, becomes, on that account,

The Georgia.

responsible for the losses which she may have been instrumental in inflicting on the other belligerent; and it fails to see how those losses can be attributed to the subsequent forbearance to prosecute. The consequences to which such a principle, if pursued, would lead, cannot be unknown, certainly, to the Government of the United States. It is true, indeed, that when a succession of criminal enterprises, openly undertaken against the peace and security of a friendly country, are suffered to remain unpunished, the encouragement which such impunity holds out to subsequent enterprises of a like kind, is a proper subject of grave remonstrance, and may, if remonstrance be unheeded, justify the injured nation in resorting to measures of self-redress. But Her Majesty's Government has always been cautious in the exercise of this right of remonstrance, being aware that it is often difficult to obtain a conviction for offences of this class, and that the difficulty may be even enhanced by any attempted severity of punishment; and being sensible also that such questions must, in general, be left, in every country, to the independent action of the Executive and Judiciary authorities, without external interference.

In the case of the Georgia, prosecutions were in fact instituted against the only persons against whom there appeared to be any reasonable prospect of substantiating a charge and obtaining a conviction. As to the sentence pronounced, that is generally a matter over which the Government has no control. The law leaves it, within certain limits, to the discretion of the Judges, over whom the Government has no power. It is not alleged by the United States, that a penalty inflicted by a Judge was, in any case, remitted by an act of the Executive. There often may be, and in this case there were, good reasons, in the interest of the law for resting satisfied with a moderate sentence, rather than raise difficult and inconvenient questions as to the construction of an Act of Parliament.

Before proceeding to the case of the Shenandoah, it is right to recall the fact that, during the year 1863, the attention of Her Majesty's Government was directed to many vessels building or fitting out in British ports, and suspected of being intended for the naval service of the Confederate States. An account of all these has been laid before the Arbitrators in the British Case.* It has been seen that, of twelve suspected vessels, four were seized and effectually prevented from being applied to their contemplated purpose; whilst in the eight remaining cases no reasonable grounds of suspicion were found on examination to exist, which would have justified the Government in interfering, and none of them were, in fact, ever armed or used for purposes of war. It has been seen that, in every instance, directions were given, without the least delay, for investigation and inquiry on the spot by the proper officers of Government; that in some cases these inquiries were ordered and made before the receipt of any representation from Mr. Adams; and that in every case, without exception, either the information furnished proved to be erroneous, and the supposed *indicia* of an unlawful intention absent or deceptive, or this intention was defeated or abandoned by reason of the measures taken and the vigilance exercised by Her Majesty's Government.

Far, therefore, from favouring a presumption of remissness or negligence on the part of this Government, the facts clearly establish a directly contrary presumption.

The Shenandoah.

The Shenandoah.

This vessel, as has been seen from the statement already placed before the Tribunal, had been designed solely for a merchant-steamer.† She was built at Glasgow to the order of a London firm, with the intention that she should be employed in the China trade. It is a matter of first importance in that trade to secure the earliest arrivals of tea; and the object of the firm in question was to have a vessel which, by the use of steam-power, would be able to bring home the new teas faster than the quick sailing-vessels employed at that time for the purpose.‡ The Sea King, as she was then called, started on her first voyage to the China Seas towards the end of 1863; and, in order to make profit on her passage out, her owners contracted with the Government to take troops to New Zealand. From thence she proceeded to China, and returned with a cargo of tea in the ordinary course of trade. Before starting she had been provided with two smoothbore 12-pounder guns, such as are usually carried by ships trading in the China seas, to be used as signal-guns, and for other purposes common to merchant-vessels.§ In September 1864, after her return to England, she was sold by her owners, Messrs. Robertson, to a Mr. Wright, a merchant of Liverpool, through the agency of regular shipbrokers in that town; and, on the 8th October following, she again left London on a voyage which to all appearance was precisely similar to her former one, excepting that, on this occasion, instead of taking out troops to New Zealand, her port of first destination was Bombay.

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* Pages 33 to 50. † British Case, pages 143 and 160. ‡ Appendix to British Case vol. i, p. 724.
§ Ibid., p, 725.

It appears, from documents now produced by the United States for the first time, that Mr. Dudley, the United States' Consul at Liverpool, had noticed this vessel when on a visit to Glasgow, where she was built in October 1863, and that he had at that time written to his Government, describing her as "a very likely steamer for the Confederates," to whom he heard that she was going to be sold. Mr. Dudley's information, as not unfrequently happened, proved to be incorrect; and all suspicions were set at rest by the discovery that the Sea King was taking out troops to New Zealand.* Nor does his statement that she was "well adapted for war purposes" seem to have been more accurate. Her appearance, even after her conversion into a Confederate cruizer, is stated to have been that of an ordinary merchant-vessel, and her own officers doubted whether it would have been safe to fire a broadside with the guns which were then placed on board of her.† It is therefore clear that this vessel also, when she left this country, was not a ship to which the first of the three rules in the VIth Article of the Treaty would have applied, nor a ship with which Her Majesty's Government were under any obligation to interfere, according to any rule or principle of international law.

It is not pretended that the attention of the British Government was in any way called to the Sea King, even at the time when the suspicions of the United States' Consular authorities were thus roused in regard to her. From that time up to her second departure from England in October 1864, the vessel seems to have been entirely lost sight of. Ten days after that second departure, Mr. Dudley discovered and reported to the United States' Legation in London the fact, that Mr. Wright, the purchaser of the Sea King, was the father-in-law of Mr. Prioleau, a member of the firm of Fraser, Trenholm, and Co.‡ It is now contended, in the Case of the United States, that this circumstance in the family history of the firm should have been known beforehand to the British Government, whose duty it was to exercise a special supervision over any transfer of shipping made to or by this gentleman, and that the fact of his having acquired a vessel built for the China trade, and sent her out to Bombay with what it subsequently appeared was an ordinary cargo for such a voyage,§ should "at once have attracted the attention of the British officials." "The omission to take notice of this fact," it is said, "is a proof of want of the due diligence required by the Treaty."‖ It was a failure of due diligence—nay, even of "the most ordinary diligence"—on the part of Her Majesty's Government, that it forbore to pry into the family circumstances of Prioleau, acquaint itself with the name of his father-in-law (and, it may be presumed, with his other connections), and prevent by some unexplained process such persons from buying steamers in the London market. What exact "notice" the officials should have taken, or what they should have done to follow up "so palpable a clue," the United States have omitted, or perhaps have not found it easy, to state. It is difficult to suppose that it can be seriously argued that such a system of espionage is among the duties which can be properly be expected of a neutral Government, or that such a Government can fairly be charged with negligence in having failed to discover grounds for action, when the parties most directly interested, with equal access to information, had not even seen cause for suspicion. But Her Majesty's Government thinks it right to direct the attention of the Tribunal to this illustration of the view of international duty on which the claims of the United States are founded, and of the "due diligence," the "wakefulness and watchfulness" which, according to that view, are to be exacted from all neutral nations, under the penalty of being exposed to such demands as are now made against Great Britain.

Case of the United States, p. 113.

The best proof of the apparently innocent nature of the voyage is the circumstance that the persons most likely to notice anything out of the ordinary course, namely, the crew of the vessel herself, were quite unsuspicious of the real intentions of the owner; and that when it became known to them, on their arrival off Madeira, that the vessel was to be turned into a Confederate cruizer, forty-two out of forty-seven of them refused every inducement in the shape of money and promises held out to them to serve in her, and insisted on being sent back to England.

On the day following the departure of the Sea King from the port of London, another steamer, the Laurel, left Liverpool, ostensibly for Matamoros viâ Nassau. The United States' Consul at Liverpool reported to his Government that she had taken on board cases marked as machinery, but, in reality, as he believed, containing guns and gun-carriages;

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* Appendix to Case of United States, vol. vi, p. 555.

† See Report of Captain Payne, Appendix to British Case, vol. i, p. 557; and of the United States' Consul at Melbourne, Appendix to Case of the United States, vol. vi, p. 595.

‡ Appendix to Case of United States, vol. iii, p. 319; vol. vi, p. 560.

§ See evidence given at the trial of Captain Corbett, Appendix to Case of the United States, vol. iv, p. 632.

‖ Case of the United States, p. 417.

that she had shipped many more seamen than were necessary for a vessel of her description; that he heard that some Confederate officers were also to go out in her, and that he had his suspicions that she would prove to be a privateer; but he added, "I have no evidence against her."* He could obtain no evidence: but this does not prevent the introduction into the Case of the United States of the assertion that the British Government could by the exercise of due diligence have detained her—without evidence, it must be presumed, and without any charge of an offence known to the law. Neither Mr. Dudley nor the United States' Legation in London gave any notice on the subject to the British authorities, and the attention of the Government was first called to the proceedings of the two vessels by a Report received on the 12th of November from the British Consul at Teneriffe.

The meeting of the Laurel and the Sea King off the Madeira Islands, and the transfer of the latter vessel to the Confederate flag under the name of the Shenandoah, after receiving her armament and crew from the Laurel, have already been stated in detail by Her Majesty's Government in the Case presented by it to the Tribunal, and need not be here repeated. For the same reason no further account need be given of the investigations which were made by the British Consul at Teneriffe on the arrival of Captain Corbett and the late crew of the Sea King at that island, on board the Laurel, and which led to his sending the Captain to England under arrest for breach of the Foreign Enlistment Act; nor of the steps which were thereupon at once taken by the Government to bring the offender to justice. Her Majesty's Government maintains that all that was in its power and could fairly be expected of it was done to vindicate the neutrality of Great Britain on this occasion.

The Shenandoah proceeded from Madeira, and, after a cruize of about three months, anchored in Hobson's Bay, the port of Melbourne, on the evening of the 25th of January 1865. She was the first vessel of war belonging to either of the contending parties which had appeared in Australian waters since the commencement of the civil war.† The circumstances of her visit and the conduct of her commander, Lieutenant Waddell, during her stay, placed the Colonial authorities in a position of no little difficulty and perplexity, in which they seem to have acted with great discretion and vigour, though their conduct has not escaped much invidious comment in the Case of the United States. It may be convenient to the Arbitrators that the facts should be here re-stated in the form of a connected narrative.

Lieutenant Waddell, immediately on his arrival, sent a letter to the Governor stating that the machinery of the Shenandoah required repairs and that he was in want of coal and requesting permission for repairs and supplies, to enable him to get to sea as quickly as possible.† This note was received about half-past 8 o'clock in the evening of the 25th of January; and the messenger was informed that it should receive early attention and be replied to in the course of the following day. The Governor accordingly summoned the Executive Council on the 26th, and communicated to them the application he had received; and, upon their advice, a letter was addressed to Lieutenant Waddell granting the permission desired, and requesting information as to the nature and extent of the repairs and supplies required, in order that the Governor might be enabled to judge of the time necessary for the Shenandoah to remain in the port of Melbourne. Extracts of orders issued by Her Majesty's Government for the proper preservation of neutrality were at the same time forwarded for Lieutenant Waddell's guidance.‡

Upon receiving this communication, Lieutenant Waddell applied to Messrs. Langlands, ironfounders, of Melbourne, to examine the vessel, and undertake the repairs. He seems further, from a report received by the Governor from the officials of the port, to have at once set men to caulk the decks and outside of the vessel, which was the only repair that could be executed in her position at the time.§ On the 28th January, he wrote to apologize for the delay in furnishing the particulars requested of him, and explained that Messrs. Langlands had been pursuing the examination, and had not yet finished their report, although he had impressed upon them the importance of haste. On the 30th January, a report of the repairs required was furnished by Messrs. Langlands, and forwarded by Lieutenant Waddell to the Colonial Government. It was to the effect that it would be necessary to place the vessel on the slip.‖ On the same day, and before

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* Appendix to Case of the United States, vol. iii. p. 317; vol. vi, p. 556.
† Appendix to British Case, vol. i, p. 500.
‡ Ibid., vol. i, p. 511; vol. v, p. 65.
§ Ibid., vol. i, p. 529; vol. v, p. 79.
‖ Ibid., vol. i, p. 640; vol. v, p. 69.

granting permission for this purpose, the Governor appointed a Board of three officers, one of whom was the Government engineer, to proceed on board the Shenandoah, and report whether she was then in a fit state to go to sea, or what repairs were necessary. This Board had the vessel examined by a diver, and reported on the 1st of February that she was not in a fit state to proceed to sea as a steam-ship; that repairs were necessary, and that the extent of the damage could not be ascertained without the vessel being slipped.* Permission was thereupon granted for placing the vessel upon the slip, which had originally been built by the Government, but was at that time in the hands of a private firm.

In reply to a renewed inquiry, Lieutenant Waddell stated the nature of the supplies required by him, which consisted of fresh provisions daily for the crew, and stores of wine, spirits, limejuice, and clothing.† Of these he received permission to ship such quantities as might reasonably be necessary. An application which he made to be allowed to land some surplus stores was refused, on the advice of the Attorney-General, as being inconsistent with the proper observance of neutrality;‡ and he was afterwards informed that, for the same reason, the use of appliances which were the property of the Government, could not be granted, nor any assistance rendered by it, directly or indirectly, towards effecting the repairs of the Shenandoah.§ The Governor had also given directions that the officials of the port should furnish him with daily reports of the progress made in repairing and provisioning the vessel, and that every precaution should be taken against her armament being increased or rendered more effective.‖

The reports received not showing sufficient progress in the repairs, a letter was addressed to Lieutenant Waddell on the 7th February, desiring him to name a day for proceeding to sea. Lieutenant Waddell explained the delay which had taken place, as arising from the recent gales, which had prevented him from lightening the vessel.¶ It will be seen by the reports from the officials of the port, that the Shenandoah had broken adrift from her moorings.** The state of the tides further interfered with the process of getting her on the slip, which was at last effected on the 10th February. The Board of officers appointed by the Governor then again examined the vessel, and reported that the repairs necessary to render her seaworthy could be effected in about five clear working days.†† On the 14th February, Lieutenant Waddell was again requested to state when the Shenandoah would be ready to put to sea, and he replied, that she would be ready for launching on the afternoon of the next day; that he had then to take in all his stores and coals, and to swing the ship; and that he hoped to proceed to sea in her by Sunday the 19th instant.‡‡

In the meanwhile the Consul of the United States had, since the arrival of the Shenandoah at Melbourne, continued to address protests to the Governor, denouncing the vessel as a pirate, and contending that she was not entitled to be considered as a ship of war, and that it was the duty of the Government to seize and detain her. These communications, which were accompanied by various affidavits of persons who had been taken off American merchant-vessels captured and destroyed by her, were submitted to the legal advisers of the Colonial Government. They reported their opinion that there was no evidence of any act of piracy committed by any person on board the ship, and that she purported to be, and should be treated as, a ship of war belonging to a belligerent Power.§§ An answer to this effect was accordingly sent to the Consul.‖‖

On the 10th February the Consul forwarded an affidavit taken before him by a man who had lately been cook on board the ship, which tended to show that men had joined her from the Colony, and were at that time concealed on board of her.¶¶ The matter was at once placed in the hands of the police; and, evidence having been obtained to identify one of the persons suspected, a warrant was issued for his arrest on the 13th February.***

On the evening of the same day a police officer went on board for the purpose of arresting the men; but both on that occasion and on the following morning he was refused permission to go over the vessel for the purpose, Lieutenant Waddell pledging his word of honour as an officer and a gentleman that he "had not any one on board, had not engaged any one, and would not do so while he was at Melbourne," and declaring that he would rather fight his ship than allow her to be searched for the man.††† The matter was laid by the Governor before the Executive Council on the same day. The

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* Appendix to British Case, vol. i, p. 518; vol. v, p. 73.
† Ibid., vol. i, pp. 517 and 641; vol. v, pp. 69, 70.
‡ Ibid., vol. i, pp. 520, 522; vol. v, pp. 75, 76.
§ Ibid., vol. i, p. 642; vol. v, p. 77.
‖ Ibid., vol. i, p. 529; vol. v, p. 74.
¶ Ibid., vol. i, pp. 642, 643; vol. v, p. 77
** Ibid., vol. i, p. 529; vol. v, p. 80.
†† Ibid., vol. i, p. 522; vol. v, p. 78.
‡‡ Ibid., vol. i, p. 643; vol. v, p. 78.
§§ Ibid., vol. i, p. 515; vol v, p. 88.
‖‖ Ibid., vol. i, pp. 593, 617; vol. v, p. 88.
¶¶ Ibid., vol. i, p. 606; vol. v, p. 107.
*** Ibid., vol. i, p. 536.
††† Ibid., vol. i, p. 524; vol. v, p. 109.

Part VII.

The Shenandoah.

Shenandoah was at this time on the slip, although nearly ready to be launched. A letter was addressed to Lieutenant Waddell, calling on him to reconsider his determination, and intimating that, in the meanwhile, the permission to repair and take in supplies was suspended. A Proclamation was at the same time issued by the Governor forbidding Her Majesty's subjects to render any aid or assistance to the Shenandoah, and a body of 100 police and military were ordered down by telegraph to seize the slip. This they proceeded to do the same afternoon. About 10 o'clock in the evening four men were seen to leave the vessel in a boat pulled by two watermen. They were followed and arrested, and one of them proved to be the man against whom the warrant had been issued.*

Lieutenant Waddell wrote to protest against the course which had been taken. He denied that the execution of the warrant had been refused, as there was no such person as therein specified on board. He added that all strangers had been sent out of the ship; and that, after a thorough search by two commissioned officers, it had been reported to him that no one could be found on board except those who had entered the port as a part of the Shenandoah's complement of men. "I therefore," he wrote, "as Commander of this ship, representing my Government in British waters, have to inform his Excellency, that there are no persons on board this ship except those whose names are on our shipping articles; and that no one has been enlisted in the service of the Confederate States since my arrival in this port, nor have I, in any way, violated the neutrality of the port."† This letter was laid by the Governor before his Council on the 15th of February, together with one from the lessee of the slip. The latter stated that, should a gale of wind come on, it would be necessary either to launch the Shenandoah, or to run a great risk of her sustaining serious damage in consequence of her unsafe position, and that the Government must take the responsibility of any expenses which might be incurred. As the object in view had been secured by the arrest of the men, it was decided, under these circumstances, to withdraw the previous prohibition, and to allow the launch of the vessel. Lieutenant Waddell was informed that this had been done on the faith of the assurance he had given; but his attention was called to the fact, that the four men arrested had been on board his ship, and he was told that he would be expected to use all dispatch so as to insure his departure by the day named by him—the 19th.‡

The Shenandoah was accordingly launched on the evening of the 15th February; she reshipped, from a lighter, the stores which had been discharged before placing her on the slip, and, after taking on board supplies and coal, she left Melbourne at half-past 7 o'clock on the morning of the 18th of February, being one day sooner than was expected.

It is right to say, that Lieutenant Waddell wrote to deny that the four men arrested had been on board with his knowledge; they had, he said, been ordered out of the vessel by the ship's police, who had only succeeded in discovering them after the third search.§ The officers of the Shenandoah also published, in one of the newspapers, denials of any complicity in the matter on their part.

During the two days which elapsed between the launch of the Shenandoah and her departure from the Colony, the most careful vigilance was enjoined on the authorities to prevent any violation of the Foreign Enlistment Act. A reference, however, to the nature of the harbour and to the circumstances of the case will show how difficult it was to take effectual precautions for this purpose. Hobson's Bay, the harbour of Melbourne, is the inland termination of Port Phillip, a large basin of irregular oval shape, some 60 or 70 miles in circuit, with a narrow entrance to the sea. Such a conformation of coast offered great facilities for sending off men from different parts of the bay, who could be shipped on board the Shenandoah either before or immediately after she had passed this narrow entrance. There was no British vessel of war at or near Melbourne to which the duty of watching or controlling the movements of the vessel could be assigned. The legal advisers of the Colonial Government, when consulted on the question, had declared that they were not prepared to advise that the execution of a warrant on board of her could properly be enforced at all hazards;‖ and this opinion was afterwards confirmed by that of the Law Officers of the Crown in England.¶ All, therefore, that could be done was to enjoin such supervision as could be exercised by the water police of the port while the Shenandoah was at anchor, and to give orders to the pilot not to allow any boat to come alongside, or any person to come on board, from the time of her weighing anchor till he left her.** With regard to the first of these two measures, it is not difficult to perceive that to keep effectual watch

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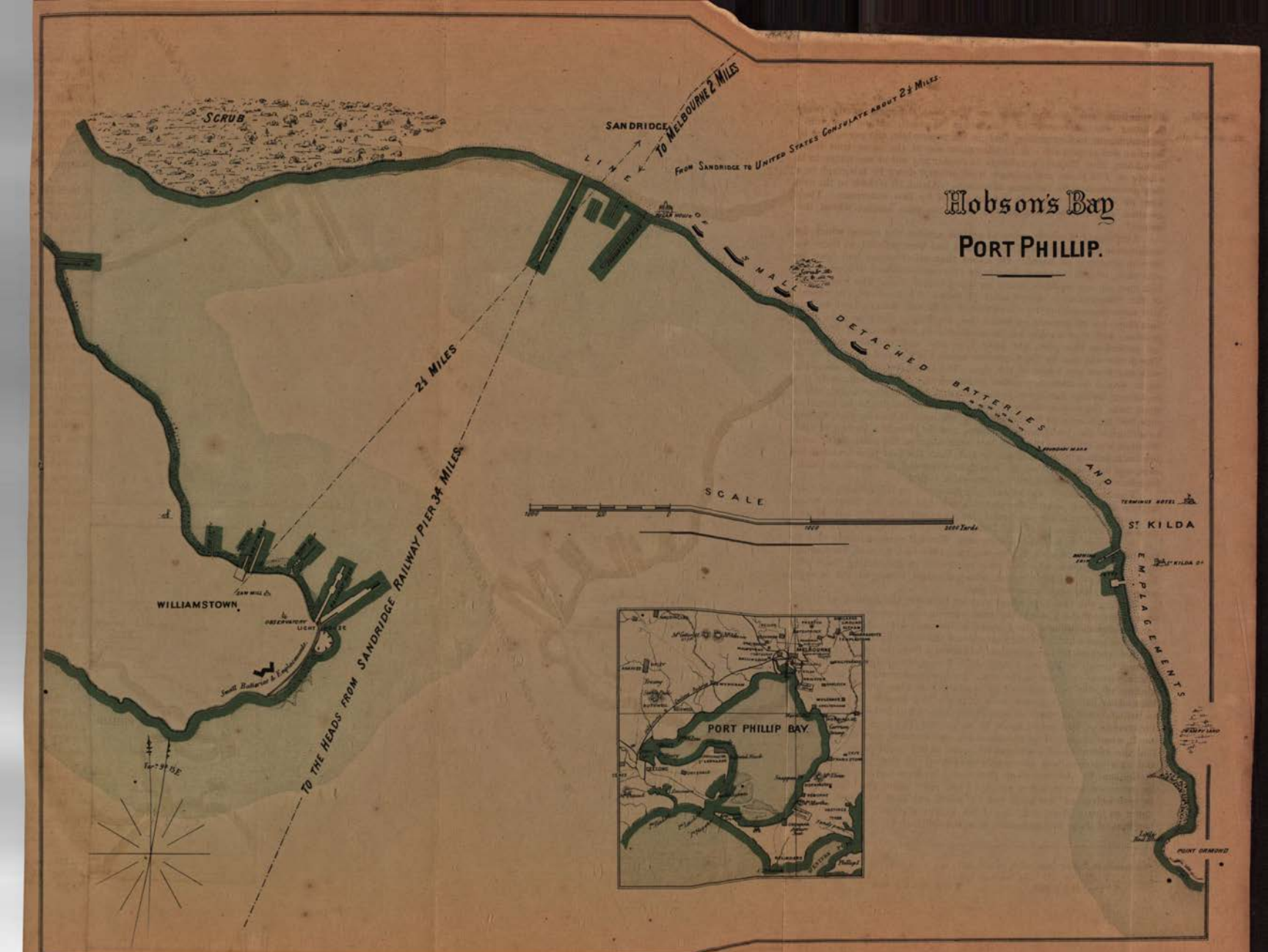
* Appendix to British Case, vol. i, pp. 525–527; vol. v, pp. 109–112. † Ibid., vol. i, p. 644; vol. v, p. 110.
‡ Ibid., vol. i, p. 645; vol. v, p. 112. § Ibid., vol. i, p. 646; vol. v, p. 113.
‖ Ibid., vol. i, p. 526. ¶ Ibid., vol. i, p. 558. ** Ibid., vol. v, p. 84.

Hobson's Bay
PORT PHILLIP.



over a vessel which is shipping coals and stores in a harbour from two to three miles wide at the place where she is anchored, in the midst of some two hundred or more vessels of every kind, must be no easy matter, even if a larger force were employed than could be available for the purpose on this occasion. With regard to the latter precaution it is evident that everything must depend on the good faith of the pilot, and his ability to carry out his instructions. After the Shenandoah had left Melbourne, it became a matter of public report, that some men had joined her before her departure, and the number, which was no doubt much exaggerated, was stated to be as high as fifty or sixty. The inquiries made afterwards by the police resulted in the identification of some eighteen or twenty persons altogether, who had left the Colony and were believed to be on board of the ship. Of these it appeared that seven had been employed in shipping coals, and they went on board in the night or early morning before her departure on the pretence of getting paid for their work, but did not return. It further appeared that, about 9 o'clock on the night of the 17th of February, some men had been collected on the railway pier of Sandridge, a suburb of Melbourne. The pier in question is the terminus of a railway from the town of Melbourne, and there is a communication by a steam ferry to Williamstown, which is on the opposite side of the bay, about 2½ miles distant, and where the patent slip and the station of the water police are situated. The Shenandoah was at anchor in the Bay between Williamstown and Sandridge. From the statement of one of the boatmen employed, the men in question must have dispersed into some wooded land a short distance off at the time when the boat of the water police came round to that part of the harbour, and thus avoided observation. After the boat had rowed off to the opposite side the men seem to have returned in small parties, and gone off from the pier in watermen's boats which put them on board the Shenandoah. How many of them were part of the original crew returning to the vessel from the shore, and whether any were new hands, there is nothing to show. The police constable on duty saw the boats after they had started and when they were returning, but had of course no means of investigating this question.* It seems indeed from the wording of his report as though the darkness or the distance prevented his seeing whether the boats did or did not actually go to the vessel; all that is stated is that they went in that direction. A man of the name of Robbins went up to the American Consulate, where he arrived about 11 o'clock at night, and stated what was taking place. The American Consul sent him back to give information to the water police at Williamstown, a distance in all about 5 miles by land and water, where he must have arrived too late for any interference or inquiry.†

At about 5 o'clock the same afternoon, another man of the name of Forbes had come to the American Consul with a statement that he had seen five men at Sandridge, one of whom had told him that they were going out in a vessel called the Maria Ross, to join the Shenandoah when she got into the open sea beyond the jurisdiction of the port. The Consul took the man to the office of the Crown Law Officers, which had been closed some time before, but where he met the Crown Solicitor, who had accidentally returned. It does not fall within the powers or duties of that officer to take depositions or issue warrants, and he referred the Consul to a magistrate as the proper person to go to. The Consul then proceeded to the Houses of Parliament, and placed the matter before the Attorney-General, who offered to lay the matter before the Government if furnished with an affidavit. Instead of complying with this suggestion, the Consul applied to the Chief of Police, who naturally declined to act without a warrant, but suggested, as the Crown Solicitor had done, that the Consul should apply to a Magistrate for the purpose. The Consul accordingly went on to a Police Magistrate in Melbourne. This latter, after examining Forbes, did not feel justified in granting a warrant on such testimony alone, and he advised that application should be made to the Water Police at Williamstown, who might be able to furnish corroborative evidence. This advice the Consul did not think fit to act upon. He returned home, took the man's deposition himself, and determined to forward it to the Attorney-General, to be laid before the Government, but he did not do this until the following morning, after both the Shenandoah and the Maria Ross had sailed. It is not true that (as alleged in the Case of the United States), "he could get no one to attend to his representations." On the contrary, they received, according to his own evidence, "patient" attention from the Attorney-General, as well as from the Magistrate to whom he had recourse, and they advised him what to do;‡ he did not follow that advice, and he is certainly more justly chargeable with a want of due diligence than those who, though unable to issue the warrant he asked for, did their best to put him in the

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* Appendix to British Case, vol. i, pp. 551–553; vol. v, pp. 117-122.

† Ibid., vol. i, p. 587.

‡ Ibid., vol. i, pp. 587, 618.

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right way to obtain it. The Maria Ross was, however, twice searched before leaving the Bay, and the mate, who was afterwards examined, denied most positively that she had taken any passengers, or that any men were concealed on board of her.*

Such, as far as is known to Her Majesty's Government, is all the information which the authorities of Melbourne were able to obtain as to the alleged shipment of men from the Colony on board the Shenandoah. It was furnished, for the most part, to the police by the boatmen who had been employed in putting the men on board, on the understanding that they should not themselves suffer on account of what had been done. Of the four men who had been arrested on the night of the 14th, one claimed to be an American citizen and was discharged; the other three were remanded, and, after a month's imprisonment, brought to trial. Two of them were then convicted and sentenced to further imprisonment; the third, a boy of 17, was discharged. The Governor, in reporting these facts, announced his intention of refusing the hospitalities of a neutral port to Lieutenant Waddell and the other officers of the Shenandoah, should they revisit the Colony.† He wrote also to the Governors of New Zealand and the other Australian Colonies, and to the Commander of the British naval forces on the station, to warn them of what had occurred.

Having thus recounted the facts of the visit of the Shenandoah to Melbourne, Her Britannic Majesty's Government proceeds to notice the more important of the complaints made in the Case of the United States, respecting the manner in which that vessel and her officers were received and treated by the authorities. Some of these contradict one-another. For instance, at page 426 of the Case, it is imputed as a delinquency that Lieutenant Waddell's application for permission to repair was not officially answered till after the twenty-four hours allowed by the instructions of January, 1862, for his stay had expired; a statement which is supported by no evidence, and which, from the terms of the United States' Consul's report to his own Government, appears highly improbable. It will there be seen that the Shenandoah entered the bay about 8 o'clock P.M. on the 25th of January,‡ and that the Consul received, at 3.30 P.M. on the next day, a communication from the Government respecting the prisoners whom Lieutenant Waddell desired to land; this communication having been decided on, and no doubt sent at the same time as the answer to Lieutenant Waddell's application.§ But almost immediately afterwards it is mentioned, apparently as still more reprehensible, that the officer who took Lieutenant Waddell's letter on shore returned with an affirmative answer the same night.‖ If it was wrong to delay the official answer, it is difficult to understand what exception could be taken to sending a verbal reply at once; but it will have been seen by the narrative given above, that this second statement is also incorrect, and that the bearer was only informed that the letter would receive early attention.

Page 116.

In the Case of the United States, objection is taken to the permission which was given to Lieutenant Waddell to take on board 250 tons of coal while at Melbourne; and a minute examination is attempted of the nature of the repairs supposed to have been made, with an elaborate estimate of the time in which they might have been completed, if pushed on with rapidity, and if nothing had occurred to delay them. "It is difficult," the Case says, "under the circumstances, to resist the conclusion that the repairs were dawdled along for the purpose of securing the recruits, and that the authorities, to say the least, shut their eyes while this was going on." At this distance of time and place, when all the particular circumstances cannot be exactly known, it seems to Her Britannic Majesty's Government that it could scarcely serve any useful purpose to follow all the details of a technical argument which is founded largely on conjecture. What, indeed, could be less reasonable than that the Arbitrators should now be asked, in a case of this kind, to set aside the estimates made on the spot and at the time by Government officers and experienced professional men, on the strength of a merely conjectural estimate suggested by the United States, which takes no account of local circumstances, and, on no better ground than this, to impute negligence and connivance to the authorities of an important British colony?

The Shenandoah arrived at Melbourne during a period of exceedingly severe weather. She was obliged, according to the showing of the United States themselves, to depend upon her steam power, on account of the inadequacy of her crew.¶ In this manner she

Case of the United States, p. 115.

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* Appendix to British Case, vol. i, p. 554; vol. v, p. 120. † Ibid., vol. i, p. 550.

‡ Appendix to Case of the United States, vol. vi, p. 588.

§ See Appendix to British Case, vol. i, p. 511. It is stated in one of the newspapers sent home by the American Consul that the reply was known on board the Shenandoah between 3 and 4 o'clock (Appendix to Case of United States, vol. vi, p. 652).

‖ This is stated on the authority of a published account of the cruize of the Shenandoah by one of her officers, which in other respects also gives a very inaccurate account of the communications between Lieutenant Waddell and the Colonial authorities.

¶ Case of the United States, p. 421.

had expended a considerable portion of her original supply of coal, and had worn out the machinery of her screw. She thus came into Melbourne in a partially disabled state, and requested and obtained permission to make good her defects and to replenish her coal. The United States have sought to draw a contrast between her treatment there, and that of a vessel of the United States' navy, at Barbadoes. The difference, however, really lay not so much in the treatment as in the circumstances of the two vessels and the temper of their respective commanders. The Shenandoah was not allowed to remain in port on the mere word of Lieutenant Waddell, but was twice subjected to the examination of a board of officers appointed by the Governor for the purpose, who certified that she was in need of repairs. To this examination Lieutenant Waddell assented without any demur. Captain Boggs, on the other hand, who was distant from the ports of his own country about as many hundreds of miles as Lieutenant Waddell was thousands, took offence at a request that he would give an assurance of his inability to put to sea, and preferred to leave the port at once. It was not the intention of the Orders of January 1862, that a vessel should be dismissed summarily from a port in a distant colony, many thousands of miles from her own ports, in a crippled state, in which her crew would be inadequate to manage her. It is objected that the repairs were "dawdled"—and this when, a few pages before, attention has been drawn* to a passage in one of Lieutenant Waddell's letters, to show that he had commenced the repairs at once, before a report had been furnished of what was required. On reference to the copies of correspondence sent home at the time, and to those since received from the present Governor, it is found that the sentence referred to ("the other repairs are progressing rapidly"), did not occur in Lieutenant Waddell's original letter, though inserted in the copy published in the colonial newspapers, from which the quotation, in the Case of the United States, is made.† It is, however, true that, with a view to complete the repairs as soon as possible, men were employed to caulk the vessel as soon as permission to repair was received. The nature of the weather, which was very rough, probably rendered it impossible to send down a diver to examine the vessel for the first few days, and the state of the tides seems to have occasioned some further delay in getting her on to the slip, but in other respects the repairs were pushed on with all possible rapidity and completed within the time estimated for them. Lieutenant Waddell expressed throughout his anxiety to shorten his stay, and probably with truth, if, as may be gathered from the correspondence, his men were deserting. The steps taken for examining the vessel, the vigilance enjoined on the authorities of the port, the daily reports required from them as to the progress of repairs, and the reiterated request to Lieutenant Waddell to fix a day for his departure, certainly show no laxity or indisposition on the part of the Colonial Government to prevent any abuse of the permission granted by it.

Case of the United States, p. 116.

On the question of the enlistment of men, and the proceedings taken against the offenders, it is remarked, in the Case of the United States, that the authorities "carefully let alone Captain Waddell and his officers, who had been violating Her Majesty's Proclamation and the laws of the Empire, and they aimed the thunders of the laws against an assistant cook." The facts are, in the first place, that there was evidence against the seamen arrested, and suspicion only against the Commander; and, in the second place, that the arrest, on a charge of this kind, of the commanding officer of a foreign ship of war who may happen to be ashore (on board, of course, he is secure from it) is a far graver matter than seems to be supposed, and is, indeed, an extreme measure which only very extraordinary circumstances could justify. The local authorities received up to the last the most positive assurances from Lieutenant Waddell that he had not added to his crew, and had not violated, and would not violate, the neutrality of the port. They took every precaution in their power to insure the performance of this promise; and if their efforts were not altogether successful, this must be attributed to the difficulties they had to deal with, the inadequacy of the means at their disposal, and to the reliance which they placed on the word of one whom they knew to be an American officer, and might, therefore, reasonably believe to be a gentleman and worthy of credit.

A case (with which the Arbitrators are already acquainted),‡ of the reception of some men on board a vessel of war of the United States at Cork, shows that such occurrences may, at the time, escape the notice not only of the authorities, but also of the Commander of the vessel. On the occasion referred to, sixteen men were shipped on board the United States' war-steamer Kearsarge. The fact was not known until the vessel had sailed for France; and on her return to Cork, a month afterwards, the men were sent on shore by

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* Case of the United States, p. 427.

† See Appendix to British Case, vol. v, p. 68.

‡ See British Case, p. 154.

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the Captain, with a declaration that they had been shipped without his knowledge and contrary to his instructions. Six of the men were prosecuted, but were discharged without punishment, as having probably been unaware of the nature of the offence they were committing. Evidence having been produced to implicate some of the inferior officers of the vessel, representations were addressed to the Government of the United States upon the subject, and the latter expressed their willingness to institute an investigation when the Kearsarge returned home. The course adopted on this occasion certainly did not differ, on the side of severity, from that pursued towards the Shenandoah. Nor is it doubtful to Her Majesty's Government that if on that occasion Captain Winslow had been arrested in the streets of Cork, this would have been regarded as somewhat more than due diligence by the Government of the United States.

There is a further statement in this part of the Case of the United States which Her Britannic Majesty's Government approaches with regret.

Page 117.

At page 430, mention is made of a discussion which took place in the Legislative Assembly at Melbourne as to the reception of the Shenandoah and her supposed identity with the Sea King. The Chief Secretary stated that "in dealing with the vessel they (the Government) had not only to consider the terms of the Proclamation of Neutrality, but also the confidential instructions from the Home Government." On this it is remarked, "Here the United States learned for the first time that, in addition to the published instructions which were made known to the world, there were private and confidential, *and perhaps conflicting*, instructions on this subject." Her Britannic Majesty's Government thinks that it will best consult its feelings of self-respect by leaving unnoticed the insinuation conveyed in this passage. It is no doubt true—and to persons possessing ordinary acquaintance with the details of administrative Government, it cannot appear surprising—that, in addition to the published instructions to Governors of Colonies, other instructions were sent from time to time, some of them explanatory of those published instructions, others supplementary to them, as cases arose to show the necessity of such explanations and additions. Such of these as were sent to the Governor of Victoria, and have any bearing on the matter, are now laid before the Tribunal in the Appendix.* Among these instructions will be found one dated the 12th of December, 1863, which inclosed copies of certain correspondence respecting the visit of the Alabama to the Cape of Good Hope. All the material papers in this correspondence have already been laid before the Tribunal.† Among them will be found a Report from the English Law Officers of the Crown, in which the following passage occurs :—

> "With respect to the Alabama herself, we are clearly of opinion that neither the Governor nor any other authority at the Cape could exercise any jurisdiction over her, and that whatever was her previous history, they were bound to treat her as a ship of war belonging to a belligerent Power."

It will have been seen that these last words were reproduced in the answer returned to the representations of the United States' Consul at Melbourne, on the 30th of January, 1865.‡ That these were the particular papers alluded to by the Chief Secretary is moreover obvious from the context of the speech, in which he mentions that the Government had "before them the case of a vessel in exactly the same position as the Shenandoah." It may not be within the knowledge of the Tribunal that the Reports of the English Law Officers of the Crown to Her Majesty's Secretary of State for Foreign Affairs have, according to invariable custom, been hitherto considered as documents of a strictly confidential nature, to be made known to none but the Executive Officers of the Government. This rule has now for the first time been departed from, through the anxiety of Her Britannic Majesty's Government that the Arbitrators should have before them all materials which could be made available for enabling them to form a correct judgment on the questions submitted to them.

Into the subsequent history of the Shenandoah it is needless to enter. It has been accurately told in the British Case, and there is clearly nothing in it which could impose any responsibility whatever on this country.

The United States must be well aware that, on account of the original outfit of the Shenandoah, they have no just claim against Great Britain. A sense of this, indeed, plainly betrays itself in the Case. An effort is therefore made to found a claim upon the circumstance, that this vessel was admitted, in a remote Colony of the British Empire, to the ordinary hospitalities of a neutral port, and upon what occurred during her visit there. The charges which it is endeavoured to establish against the authorities of the Colony, and through them against Great Britain, are, in substance, two. One is, that she

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* Appendix to British Case, vol. v, pp. 125-131. † Appendix to British Case, vol. i, pp. 300, 306, 312, 322.
‡ Ibid., vol i, p. 593.

was suffered to repair her steam machinery, which is admitted to have been in need of repair, although (it is objected) she was not shown to be unseaworthy as a sailing-ship. It would be difficult to imagine a much less reasonable complaint. The Colonial authorities were right in giving this permission, which was given at Brest to the Florida, in spite of the remonstrances of the United States' Minister, and which is thoroughly sanctioned by custom. They would, indeed, have been guilty of a reprehensible refusal of ordinary hospitality, if they had not given it. The other charge is, that the vessel obtained in the port some addition to her crew, and that this was done with the connivance of the authorities of the Colony. As the chief proof of connivance, it has been insisted that the ship remained in the port, undergoing repairs, a few days longer than the United States suppose to have been absolutely necessary. Again, to prove even this, which, if established, would be not merely inconclusive, but almost immaterial, there is a struggle against plain facts; and there is an endeavour to substitute conjectural estimates for those made on the spot, and at the time; circumstances are passed over which should have been taken into account; there are imputations of inattention where there was none, and suggestions of bad faith, to which the best answer is silence.

Such is the character of the argument of the United States on this point. It has been answered step by step. But Her Majesty's Government deems it right to add one observation, the truth of which will hardly be disputed in any maritime country. The act here alleged—the recruitment of seamen in a neutral port—is one which is difficult, and well-nigh impossible for the local authorities to prevent altogether, by any reasonable precautions of their own, which would not be deemed offensive by a belligerent. It is necessary, therefore, either wholly to exclude belligerent ships of war from access to, and refuge in, neutral harbours, or to place some reliance on the word of the commanding officer, and on that honourable understanding which, whilst it surrounds the vessel on her entrance with a peculiar immunity from the exercise of local jurisdiction, binds her at the same time to respect the sovereignty and neutral rights of the nation whose hospitality she enjoys. It is practically necessary to rely much on this understanding, and it is customary to do so. It has never been held that the duty of the neutral authorities is to surround a foreign ship of war with spies, to dog the steps of her officers, refuse credit to their solemn assurances, or issue warrants against them on suspicion. No neutral Power would undertake to do this, and no belligerent would endure it patiently. Great Britain has never hitherto hesitated to trust American officers, as she trusts those of other countries; and she did not deem herself bound to withdraw that customary confidence from officers whom civil dissension had armed against their own country, and who were engaged in an unhappy contest, which she sincerely deplored.

PART VIII.

The Clarence, Tacony, Archer, Tuscaloosa, Tallahassee, Chickamauga, and Retribution.

The Clarence, Tacony, Archer, and Tuscaloosa.

IN respect of these vessels (with perhaps one exception, which will be noticed presently) no failure of duty on the part of Great Britain is expressly or distinctly alleged by the United States. As to the first four, it is only insisted that, as they were armed and employed as tenders by vessels in respect of which there is alleged to have been a failure of duty, Great Britain ought to be charged with the losses occasioned by them to the United States.

The Tallahassee and Chickamauga.

The Tallahassee and Chickamauga.

Her Majesty's Government has little information respecting the earlier history of these two vessels, beyond what may be gathered from documents presented to the Arbitrators by the United States. From this source it may be collected that they were two out of a number of steamers built in England for blockade-running, and all alike, or nearly alike, in construction. They were built for speed, with double screws. There is no pretence for saying that either of them was, either wholly or in part, specially adapted within British territory for warlike use; nor has this been alleged by the United States. It is clear that they were without any such special adaptation. Both of them had been noticed, before they originally left England, by the United States' Consular officers, who were always on the watch to detect any indications of such an object or purpose; but as to neither of them was the least suspicion expressed that she was fitted or intended for any employment other than blockade-running. The Tallahassee is, indeed, in the Case of the United States, alleged to have been "fitted out to play the part of a privateer;" and, for the evidence of this, the Arbitrators are referred to a letter from Mr. Adams to Earl Russell. It might have been inferred from such a reference that Mr. Adams had asserted the fact, or at least expressed a suspicion of it, at the time. But the letter is dated 15th March, 1865, when it had become well known that the ship had for a short period been taken from her usual employment and used in making prizes.

Although the assertion mentioned above has been made, unsupported by a particle of evidence, respecting the original outfit of the Tallahassee, the United States have not added to it another, without which it is not relevant to the questions at issue; namely, that the British Government had reasonable ground to believe that the vessel was intended to be used for war. It would be of no avail to show (were it possible to do so) that the Tallahassee was fitted for war (which she was not) or intended to be used for war (of which, again, there is no proof at all), unless it could also be shown that the Government of Great Britain was, or ought to have been, in some way cognizant of that intention. But this is nowhere so much as alleged or suggested on the part of the United States.

As these vessels were not constructed or specially adapted for war, so neither were they armed, fitted out, or equipped for war within British territory. They were fitted out for a quite different purpose. There is, indeed, so far as Her Majesty's Government is aware, no evidence that they were built for the Confederate Government at all; although, like some other vessels which had originally been built for private trade, they were afterwards found in the hands of that Government.

In the summer of 1864, when the greater part of the Southern sea-coast had fallen into the hands of the United States, and access to the remaining ports of the Confederacy (now more effectively blockaded) was becoming a matter of greater and greater difficulty, the Confederate Government appears to have tried the experiment of putting guns into one or two blockade-running ships and sending them out to cruize. The only vessels with which this experiment was tried, so far as Her Majesty's Government is aware, were

the Atlanta and Edith, which were armed and commissioned, one after the other, under the names of the Tallahassee and Chickamauga. That the resolution was formed, in the case of the Chickamauga at any rate, after the ship had come into the possession of the Confederate Government, and in consequence of her being found fast under steam as a blockade-runner, is admitted in the Case of the United States. The expedient of thus arming and commissioning merchant-ships bought or hired for the purpose had been resorted to by the Government of the United States on a very large scale at the commencement and during the earlier part of the war. Vessels of all sorts and sizes, which could be made suitable (to borrow an expression from the Case of the United States) for "the sort of war carried on" by that Government, were procured by scores, and employed as fast as they could be found.

But neither the Tallahassee nor the Chickamauga was found well fitted for this new employment. The latter appears, from the statements of the United States, to have been only fifteen days at sea. The former, after a cruize of about three weeks, was "found to be ill adapted for the purposes of war," and sold to a private merchant, who gave her the name of the Chameleon.*

It is represented in the Case of the United States that the Tallahassee, before her reconversion, cruized for a short time under the name of the Olustee. There is no evidence, however, of the identity of the Tallahassee with the Olustee, beyond a statement by one Boreham, whose ship was captured by the Olustee; that his ship's carpenter, who had previously been captured by the Tallahassee, thought they were the same.†

The visit of the Chickamauga to Bermuda will be noticed in a subsequent section. Here it is enough to say that the United States are in error as to the accommodation obtained by her at that Colony and the coal shipped there.

The United States notice the facility with which one of these vessels (the Tallahassee) was reconverted into a ship of commerce, in which character she was afterwards suffered to enter and remain in British ports; and it appears to be suggested that this ought to have been in some way prevented by Her Majesty's Government. In the case of this vessel, the question whether the Lieutenant-Governor of Bermuda had acted rightly in treating her as no longer a ship of war was referred to the Law Officers of the Crown, who reported as follows:—

"With respect to the first question contained in the despatch from the Lieutenant-Governor of Bermuda, we are of opinion that he exercised a sound discretion in treating the Chameleon (after he had satisfied himself of the truth of the representations made by her master) as a merchant-vessel belonging to the country of one of the belligerents. It is competent to the Government of either belligerent to sell or transfer a ship of war to a private merchant or to change the character of a vessel from that of a ship of war to that of a merchant-vessel, if the Government chose to trade on its own account.

"To the second question, we answer that the merchant-vessels belonging to the citizens of both belligerents, and registered in their ports, ought to be admitted to the harbours of Her Majesty on the same footing. The absence of a formal recognition by Her Majesty of the Confederate States does not affect the principle of strict neutrality upon which the vessels of both belligerents are so admitted."‡

A similar question was raised when she came to Liverpool, and was resolved in the same way.

It is undoubtedly true that vessels, not originally designed for war, which have been temporarily employed for that purpose, like the two vessels in question, may be very easily reconverted into ships of commerce. But neutral Powers cannot be called upon to exclude such a vessel from their ports on account of her former employment, nor to treat her otherwise than as a ship of commerce, if they have no reason to doubt the fact that she is no longer commissioned and armed for war. The vessels armed and commissioned in 1861 and 1862 by the Government of the United States were at liberty, when that employment was over, to return to their original trade; and for a neutral Government to refuse to treat them either as ships of war when in commission or as ships of commerce afterwards would have been wrong for exactly the same reasons which would have made such a refusal wrong in the case of the Sumter (Gibraltar), or of the Tallahassee (Chameleon).

The Arbitrators will look in vain in the Case of the United States for any failure of duty charged against Great Britain in respect of either of these vessels. It is not alleged

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* Mr. Wilkinson to Mr. Gilbert, Appendix, vol. v, p. 151. The Atlanta brought cargo from Wilmington to Bermuda, early in July 1864, and cleared outwards again with cargo, as a merchant-ship, immediately afterwards. At the end of July or beginning of August she may have been armed at Wilmington, and dispatched thence as the Tallahassee; and she is said by the United States to have returned to Wilmington on the 25th of August.

† Appendix to the Case of the United States, vol. vi, p. 732.

‡ Appendix to British Case, vol. v, p. 153.

Part VIII.

The Tallahassee and Chickamauga.

that, in respect of either of them, this Government failed to exercise due diligence to prevent a violation of any obligation specified in the three Rules, or of any other neutral duty. The United States seem to have found themselves unable to make any definite charge; yet they, nevertheless, ask the Arbitrators to hold Great Britain "responsible for the acts" of both these ships, and to award to the United States, on account of them, compensation calculated on the same basis as in the cases of the Alabama itself.

Her Majesty's Government has here no charge to meet, no argument to answer: and it has a right to call upon the Tribunal to dismiss at once these utterly groundless claims.

The Retribution.

The Retribution.

We now arrive at the case of the Retribution. The account given of this vessel is that she was built in the State of New York; was, in 1861, seized by the Confederate Government; was converted from a steamer into a sailing-ship in the waters of North Carolina, and then armed and employed by that Government as a cruizer. It is not alleged that she ever received any outfit or equipment in or from British territory. What is alleged is merely this, that on one occasion she took a prize (the Hanover), captured by her near St. Domingo, to Long Cay, an island of the Bahama group, "and there sold the cargo without previous judicial process;" and that, on another occasion the Emily Fisher, a prize captured "off Castle Island" (one of the Bahamas), "was taken to Long Cay, and, notwithstanding the protest of the master, and in the presence of a British magistrate, was despoiled of her cargo, a portion of which was landed, and the balance wilfully destroyed.

Case of the United States, p. 106.

Upon the strength of these allegations alone, the United States ask the Arbitrators to hold Great Britain "responsible for the acts" of the Retribution.* Claims for the value of prizes captured by her are inserted in the general list of claims; and she is not distinguished from the other vessels, in the vain "pursuit" of which the Navy of the United States is represented as having been engaged. This is asked, "not only for the general reasons heretofore" (in the Case of the United States) "mentioned as to this class of vessels, but because, in the case of each of the captured vessels above named, the acts complained of were done within Her Majesty's jurisdiction." The British Government is not exactly informed what general reasons for demanding compensation from Great Britain are considered by the United States to be applicable to the class of vessels to which the Retribution belonged—that is to say, vessels built in the United States, wholly armed, fitted out, and commissioned within Confederate territory, and never even furnished with coal in any British port; but it is right to call the attention of the Tribunal to this admission, that the claims of the United States are founded on reasons which they suppose to extend to vessels of this latter class.

The British Government might fairly decline to enter into any discussion before the Tribunal of claims such as those made on account of this ship, since they are obviously of a different class from those "generically known as the Alabama claims," and cannot properly be reckoned among them. Her Majesty's Government prefers, however, to state the facts, inaccurately referred to by the United States, so far as it is acquainted with them.

The case of the Hanover appears to have been as follows. In December 1862, a schooner arrived at the port of Fortune Island or Long Cay, and was reported by her master (or the person who appeared to be, and acted as, such) to have run ashore—no uncommon accident in those seas—on a neighbouring islet, and to be in distress. Long Cay is a small island or strip of land, belonging to the Archipelago of the Bahamas, and about 240 miles from the seat of Government. From the ship's papers, which were regular, it appeared that she was the schooner Hanover, bound from Boston to Havana, or to seek a market; the master further stating that his instructions were to dispose of the cargo, purchase with the proceeds a cargo of salt, and try to run the blockade. The master's name was shown by the ship's papers to be Washington Case; and it was in that name that the person who represented himself to be master signed the manifest, bills of lading, and other documents, entered his vessel at the Revenue Office and finally cleared her, having loaded a cargo of salt at Long Cay. The magistrate of the district, who resides in the Island of Inagua, but happened to be at Long Cay at the time, went to the place and questioned the man, but had no reason to doubt his identity or the truth of his story; nor was there indeed any circumstance to suggest a doubt. Some words casually let fall by a drunken seaman after the supposed master had left the island (which he did by another vessel, leaving the Hanover under the command of the mate) first gave rise to a suspicion that he had been passing under a name which was not his own; but there was no reason to suspect that the vessel had been a prize. No intimation of the circumstances ever

* Case of the United States, pp. 390, 391.

reached the Colonial Government till the 11th March, 1863. A person residing at Nassau, as agent of American underwriters, then addressed a letter to the Governor, stating that the Hanover had been captured by the Retribution; and that the person who had represented himself to be Case was, in reality, one Locke, otherwise Parker, the captain of the Retribution.*

It is obvious that these facts, assuming them to be true, impose no liability on Her Majesty's Government. If the Orders of 1st June, 1861, which forbade prizes to be brought into British ports, had not been issued, the Hanover might have been openly brought in, and her cargo sold in the Bahamas, and the United States would have had no right to complain. The captain of a Confederate ship contrived, by forgery and fraudulent personation, to violate these orders, and, by so doing, rendered himself amenable to British law. Locke was afterwards twice arrested at Nassau for this offence: on the first occasion, he forfeited his bail, and left the island; on the second, he was brought to trial, but was acquitted for want of evidence. Proof of the facts, which it was necessary to establish, could only be given by some one who had been on board of the Hanover, or of the Retribution, at the time when the capture took place; and although the agent of the American underwriters, acting at the instance of the Attorney-General, sent to the United States to endeavour to secure the attendance of the master or some of the crew of the Hanover, no such testimony could be obtained.†

It may be added that, whilst Locke was in prison awaiting his trial, an application was made by the Government of the United States for his extradition, on a charge of his having been concerned in an alleged act of piracy, having no connection with the case of the Hanover. Earl Russell wrote in reply:—

"It appears to Her Majesty's Government that the United States' Government are not entitled to obtain the extradition of Locke until he shall have been tried for the offences alleged to have been committed by him against British law, and, if convicted, shall have undergone any sentence which may be passed upon him. But Her Majesty's Government are unwilling that, in consequence of any delay on this account in the extradition of Vernon Locke, the means of supporting the graver charge against him should be weakened; and I have therefore to state to you that Her Majesty's Government will waive their right to prosecute Locke for the offences of conspiracy and forgery if the evidence upon the charges arising out of the seizure of the Chesapeake shall prove to be sufficient to justify extradition by the Government of the Bahamas."‡

It does not appear that the Government of the United States made any attempt to produce the evidence which is required by law to support a demand for extradition.

Of the case of the Emily Fisher, Her Majesty's Government now hears for the first time, although it is said to have happened nearly nine years ago. No complaint appears to have been made to the Colonial Government about this vessel; and no intimation that anything illegal had occurred in relation to her seems to have been given to the Attorney-General or any official connected with the administration of criminal law in the Colony, although the agent for American underwriters, whose duty it would have been to bring forward the case, was, during the year 1863, in constant communication with the Attorney-General in reference to that of the Hanover. The then Collector at the port of Long Cay is now dead; and the time is past when authentic information of the facts could be obtained.§ Evidence produced under such circumstances ought not (if received at all) to be accepted without very close scrutiny. The evidence offered by the United States is that of the owners of the ship (who were not present, and could have no personal knowledge of the matter); of one Sampson, who represents himself as having been employed at that time as a "detective" in the Bahamas by the American Government; and of the master of the Emily Fisher. Sampson swears that all the facts alleged respecting the capture of the Emily Fisher and the subsequent transactions are true "within his personal knowledge," and that he testified to them in 1866, in a case tried before a Court in New Jersey.‖ On reference to the published proceedings of that case, it will appear that he gave no such evidence, although it would have been extremely material. He then swore only that he had seen the Retribution at Long Cay, lying outside of the Emily Fisher, and had been introduced "by an acting magistrate at Long Cay" to her officers, with whom he had had "a general talk about the difficulty with the North and South."¶ That he should have had personal knowledge of circumstances which are stated to have occurred at a great distance before the two vessels arrived at Long Cay, where he was, is obviously impossible; and

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* Appendix to British Case, vol. v, pp. 22, 165. † Ibid., p. 187. ‡ Ibid., p. 185.
§ Ibid., pp. 17, 23. ‖ Appendix to Case of the United States, vol. vi, p. 736.
¶ Appendix to British Case, vol. v, p. 196.

The Retribution.

the American Government is well aware that such testimony would be at once rejected in an American Court as it would be in a Court of Great Britain. The evidence therefore reduces itself to that of Staples, the master. Staples alleges in effect that he was captured off an islet called Castle Island, nearly two days before he arrived at Long Cay; that his captor was in league with some wreckers (persons whose trade it is to make profit by saving vessels abandoned or in distress), and ran the ship aground, when the wreckers took possession of her; that she was afterwards taken to Long Cay, in company with the Retribution; and that "he (the master) was not able, when there, to obtain possession of the brig until after he had bargained with the wreckers to pay them 50 per cent. on the cargo and $33\frac{1}{3}$ per cent. on the vessel; when, after making affidavit of his being the master, he was placed in possession by the Collector, and went on board." He adds that "he was told by the captain of the Retribution that the wreckers were to pay him something handsome, and the deponent believes they did so;" and that he "was obliged to accept the wreckers' terms at the port of entry, because the brig lay under the guns of the privateer, and the authorities declared their inability to protect him." He was "told by the authorities that, though the law would not allow the privateer to touch the brig, if he wished to do so, they had no means of preventing him."* What is here alleged, and may be true, is a conspiracy between the captain of the Retribution and the wreckers to represent the Emily Fisher not as a prize to the Retribution, but as having run aground and been got off by the latter, and thus to enable the wreckers to extort a large salvage, for which they were to pay a sum of money to Locke. Locke would thus be enabled to make profit by a prize, which he would otherwise have been obliged to release or destroy; and the fact of his having recourse to this circuitous and fraudulent transaction proves that he did not venture to attempt an actual sale of the ship or cargo even in this remote and unfrequented spot. Nothing is said about "the presence of a magistrate." Nor is anything said (which might have been expected), about a "protest" by the master: probably he was afraid to make one, whilst his vessel was under the guns of the Retribution, against which the "authorities," apparently the local revenue officer, told him it would be impossible to protect him, the port being a very small place in a remote island. It is not even stated that he ever told the authorities what had occurred before his arrival at Long Cay. He paid the salvage demanded, regained his ship and part of his cargo, part having been stolen or wasted, and left the island.

It is possible that on these facts, supposing them to be true, the owners of the ship and cargo may have been entitled to legal redress against the persons concerned in defrauding them of their property; and, if so, they might probably have obtained such redress if they had taken the necessary steps at that time. They took no steps however; they did not even make complaint or give notice of what had occurred to the Colonial Government; and now, nearly nine years afterwards, when authentic information cannot be obtained, the United States bring forward this case, not as a ground for making compensation to the owners of the Emily Fisher and her cargo, but in support of the grave charges against the British Government which they allege before this Tribunal, and of a claim to hold Great Britain liable for all the acts of the Retribution. Her Majesty's Government denies that the facts, if proved, argue any failure of international duty on the part of Great Britain, or furnish any evidence of such a failure.

* Appendix to Case of the United States, vol. vi, p. 738.

PART IX.

Reception of Confederate Cruizers in British Ports.

IT has been thought best to treat collectively the various complaints scattered throughout the Case of the United States, as to the "excessive hospitality" which is alleged to have been extended in British ports to the vessels of war of the Confederate States, in comparison with the "discourtesy" with which vessels of the United States are said to have been treated under similar circumstances. These complaints may be divided under three heads: (1) the amount of supplies granted to Confederate cruizers before any limitation was placed on such supplies by the Regulations issued by the British Government on the 31st of January, 1862; (2) the alleged disregard of those regulations in the case of Confederate vessels; and (3) their alleged rigid enforcement against vessels of war of the United States.

As regards the first question, there were but two vessels of war of the Confederate States which visited British ports before the issue of the Regulations of January 31, 1862; the Sumter and the Nashville. The facts as to these two vessels have already been stated, and it is only necessary to add a few words to show how their proceedings, coupled with those of United States' ships, and the representations of the United States' Government, led to the adoption of the Regulations.

The Sumter and Nashville.

The reception of the Sumter in the ports of Brazil, and of the neighbouring possessions of Great Britain and the Netherlands, in the summer and autumn of 1861, had given rise to warm remonstrances on the part of the United States, and they had urged on each of the three Powers the expediency of placing restrictions on the hospitality to be accorded to what they termed the "piratical" vessels of the insurgents. The Governments of Brazil and of the Netherlands, no less than that of Great Britain, had maintained that the Sumter must be regarded as a vessel of war of a belligerent Power, and that whatever restrictions might be placed on the stay of such vessels in their ports must be applied equally to the vessels of war of the United States; Mr. Seward, however, continued to press the suggestion. Lord Russell expressly stated to Mr. Adams, on the 19th December, 1861, that the reason why no such limitation had hitherto been enforced by Great Britain was that it might have seemed churlish towards vessels of the United States' navy.*

On the 24th January, 1862, Mr. Adams wrote to his Government, announcing that the Sumter, after repairing at Cadiz, had gone into the port of Gibraltar; and he added, "This tendency to take refuge in British ports is becoming so annoying to the Government here, that I shall not be surprised if the limit of twenty-four hours' stay be soon adopted."† News had about the same time been received of the attempt to form a coal depôt for the United States' Navy at Nassau, and of the presence at that port of a vessel of war of the United States, which, by having its steam up, constantly ready to start, kept all the shipping in the port in alarm. The Nashville, which had been in the harbour of Southampton since the 21st November, had refitted and was ready for sea. She was closely watched by the United States' steamer Tuscarora, whose commander was pursuing the same course as the captain of the Flambeau at Nassau, and, by keeping his steam up and having slips on his cable, was virtually keeping the Nashville blockaded in a neutral port.‡

Under these circumstances the British Government determined that the Nashville and Tuscarora should be desired to leave British waters at a date to be fixed, with an interval of twenty-four hours between their respective departures; and a few days afterwards, on the 31st January, general rules were issued to provide for such cases in future. Captain Craven of the Tuscarora, after some altercation with the authorities, quitted the port of Southampton, but returned again to British waters in its vicinity just as the Nashville

* Appendix to Case of the United States, vol. i, p. 344.
† Executive Documents, 1861-62, No. 104, p. 70.
‡ Appendix to British Case, vol. ii, p. 114.

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The Sumter and Nashville.

was leaving. He was warned that he was not to sail again until twenty-four hours after her departure, and complied, though complaining that "a just and rigid impartiality did not appear to have been extended towards him."* In a despatch dated the 7th February, 1862, and published by the Government of the United States at the time, but of which only a short extract is given in the collection now appended to their Case, Mr. Adams remarked:—

> "The impression here is that he (Captain Craven) allowed himself to be completely outwitted. He will doubtless lay the blame on the action of the people and Government of this country; my own opinion is, that if he had been a little more cool and quiet he would have fared better."†

Mr. Adams' anticipations were correct, as will appear from Captain Craven's report to his Government, now printed in the Appendix to the Case of the United States,‡ where he complains bitterly that the new regulations deprive him of "the ability of cruizing on this (the British) Coast," and speaks of the measures taken to preserve the neutrality of British waters as "collusion on the part of the authorities, to effect the escape of the privateer."

It may be as well to mention at once that the Nashville arrived at Bermuda, on the return voyage from Southampton, before the receipt in that Colony of the Regulations of January 31, 1862. There was at the time only a monthly mail to Bermuda; the Regulations could not be forwarded until the latter half of the month of February, and were received there on the 5th March, some time after the Nashville had left. The statement, therefore, in the Case of the United States,§ that the permission given to the Nashville to take on board a supply of coal was an infraction of these regulations, is erroneous. They were, according to their terms, only to take effect six days after their notification in each Colony, and the Governor was not even aware of their existence at the time of the Nashville's visit.

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From Southampton the Tuscarora proceeded to Gibraltar for the purpose of watching the Sumter; and there Captain Craven again involved himself in a dispute with the authorities. The Sumter had arrived in that port on the 18th of January, 1862, before any limitation had been placed on the stay of vessels of war of the two belligerents in British ports. The regulations of the 31st of January, restricting the stay of such vessels to twenty-four hours, except in special cases, were received and published by the Governor on the 11th of February, coming into force on the 18th. The Tuscarora arrived on the 12th, after the publication of the rules, but before they had come into force. Copies of the rules were sent in identic letters to the commanders of both the Sumter and Tuscarora on the 12th February; but it was the opinion of the Governor ‖—and that opinion was confirmed by the Home Government—that neither vessel came under the operation of those rules, so far as their stay in the port was concerned. Captain Craven, however, without communicating with the Governor on this point, withdrew to the neighbouring Spanish anchorage of Algeciras, from whence the boats of the Tuscarora passed backwards and forwards to Gibraltar, rowing round the Sumter on the way; and he wrote to the Governor inquiring why the Sumter was allowed to remain "in undisturbed possession of her anchorage," and protesting, "on behalf of the United States, against what appeared to be a departure from the rules which require that neutrals should be impartial and honest." It could not but be expected that such an imputation should draw an indignant reply from the Governor. The latter was, however, instructed to allow the boats of the Tuscarora to come into the port, provided they caused no annoyance to the Sumter.¶ That the Sumter, when she eventually left Gibraltar as a merchant-vessel, in a gale of wind, should have escaped capture by the vessels of war of the United States,** is certainly not to be attributed to any undue partiality on the part of the British authorities. Nor can Her Britannic Majesty's Government admit that there was any want of proper courtesy or hospitality shown to Captain Craven. The Tuscarora took on board 150 tons of coal at Southampton, on the 10th of January; she received further coal, the amount of which is not known, off Cowes, on the 4th of February.†† On his return to the English coast, in June, 1862, Captain Craven disregarded the rules of which he had complained, by coaling three times, within two months, at different British ports.

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* Appendix to British Case, vol. ii, pp. 124, 125.
† Executive Documents, 1861-62, No. 104, p. 38.
‡ Vol. vi, p. 59.
§ Page 316.
‖ Appendix to British Case, vol. ii, pp. 19, 23, 25, 29.
¶ Ibid., p. 41.
** Ibid., p. 57.
†† Ibid., p. 125.

Execution of the Rules of January 31, 1862, *at Nassau.*

Execution of the Rules of January 31, 1862, at Nassau.

The rules of the 31st January, 1862, contained general limitations as regards the stay of belligerent vessels of war, and the supplies to be granted to such vessels in British ports. They also contained special provisions with regard to the Bahama Islands. No vessels of war of either belligerent were to be allowed to enter the port of Nassau, or other ports, roadsteads, or waters of those Islands, except by permission of the Governor, or under stress of weather. The Bahama Islands were thus placed on an entirely different footing from any other British Colony: the treatment of United States' vessels of war there must be considered separately; and cannot, with justice, be contrasted with the reception of Confederate cruizers in other Colonies, as is done, in one instance, in the Case of the United States (p. 288). A comparison is there attempted to be drawn between the reception of the Florida at Bermuda, and the refusal of the Governor of the Bahamas to allow the Honduras to anchor in the harbour of Nassau. It is obvious that there is no real similarity between the two cases. At Nassau there was a special prohibition against the admission of belligerent vessels of war; at Bermuda there was no such prohibition. The Florida, moreover, was declared by her commander to be in need of repairs. No such reason was alleged by the commander of the Honduras for his application. The latter vessel had been sent to the Bahamas to assist the crew of the San Jacinto, which had been wrecked off the Abaco Islands, a group of the Bahamas to the north of New Providence. She was there allowed permission to anchor by the authorities for the purpose of her visit, and from thence she proceeded to Nassau in order to obtain specie for the payment of salvage money to the inhabitants of Abaco who had been instrumental in saving the wreck. The Governor did not consider that the emergency was sufficient to justify his granting special permission to the Honduras to anchor. The Captain came on shore to urge a reconsideration of this decision, but the Governor did not see grounds for altering it; and he suggested that the Captain might take back the specie at once, or, if that were impossible, the Consul might undertake to forward it to Abaco. The Captain returned to his vessel, but, in defiance of the quarantine regulations, as well as of the spirit of the Governor's decision, he and some other officers of the Honduras landed the next morning, called at the United States' Consulate, purchased some stores, and returned to the vessel. The Governor took notice of this by addressing a very temperate remonstrance to the Consul; he acted rightly in doing so; and Earl Russell expressed this opinion when the matter was brought to his notice by Mr. Adams.*

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"Nassau," he said, "is a position from which, on the one hand, Confederate privateers might have greatly annoyed the commerce of the United States, and which, on the other hand, might have been a convenient base of operations for the United States' Navy. It was thought right therefore by Her Majesty's Government to forbid the resort of men-of-war of either of the two parties to the port of Nassau.

"Governor Rawson, who has been exceedingly strict in compelling the Confederate vessels to comply with the rules which he was ordered to enforce, has, no doubt, conceived it to be his duty to require equal compliance with those rules from the United States' vessels of war. Her Majesty's Government, if the case had been referred to them, might, in all probability, have dispensed with the observance of these rules in the peculiar case of the Honduras; but Her Majesty's Government cannot be surprised that an inferior officer should not have conceived himself at liberty, upon his own responsibility, to dispense with rules laid down by Her Majesty for his guidance. I have to observe, moreover, that the landing of the Captain of the Honduras and his officers was persisted in not only in contravention of the express dissent of the Governor, and in violation of the rules which the Governor had been ordered to cause to be observed, but in contravention also of the quarantine laws of the Colony. This is a proceeding which Mr. Seward, I conceive, will surely not consider to have been justifiable."

It is however alleged generally, in the Case of the United States, that the special permission to anchor in the port of Nassau was "lavishly given to every insurgent cruizer, but was granted churlishly, if at all, to the vessels of the United States"† Elsewhere it is said that "an order more unfriendly to the United States," than that of the 31st of January, 1862, "could not have been made. Under the construction practically put upon it, the vessels of war of the United States were excluded from the harbour (of Nassau) for any purpose."‡ It will perhaps be a matter of some little surprise to the Tribunal to learn, that whereas on two occasions only did vessels visit the port of Nassau as Confederate cruizers, there are no less than thirty-four visits of United States' ships of war to the Bahama Islands recorded during the time that the regulation

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* Appendix to Case of United States, vol i, p. 714. † Page 316. ‡ Page 228.

Reception of Confederate cruizers in British ports.

Execution of the Rules of January 31, 1862, at Nassau.

was in force.* On four occasions, at least, vessels of the United States exceeded the twenty-four hours limit, and took in coal by permission; one of them also received permission to repair; several were engaged in pursuit of vessels suspected of being blockade-runners, and did not in every instance relinquish the chase within British limits. Two prizes appear, indeed, to have been captured by them, one within a mile of the shore, the other almost in port.*

The use made of the waters of the Bahamas by Federal cruizers, for the purpose of watching and intercepting vessels supposed to be freighted with cargoes for Confederate ports, was so persistent as to induce the Governor on one occasion, when granting permission to coal to the commander of the Dacotah, to accompany it with the condition that the vessel should not, within the next ten days, be cruizing within five miles of any of the Bahama Islands.† On this subject there is some comment in the Case of the United States. The application was for permission to ship, not twenty tons of coal as there represented, but sixty; and no limitation of the amount was imposed by the Governor, though the Captain of the Dacotah chose only to take the smaller quantity, which was sufficient to carry him to the coaling depôt of the United States' navy at Key West. The condition exacted on this occasion by the Governor was not countenanced by Her Majesty's Government, nor was it required on subsequent occasions; although Earl Russell had, in June 1864, to complain of the frequent visits of the United States' gun-boat Tioga to the out Islands of the Bahamas for the purpose of obtaining supplies, and of the manner in which the commander of that vessel set the regulations at defiance by anchoring in the roadstead of Bimini without permission.‡

It has been said that only two vessels of war of the Confederate States are known to have visited the harbour of Nassau as such, the Florida and the Retribution; two other vessels, the Nashville and the Tallahassee, which had acted as cruizers, entered the harbour, but they did so after they had ceased to bear that character, as merchant ships and under other names. Of the visit of the Retribution there is little to be said. She entered the harbour of Nassau as being in distress, in February 1863, where she was condemned as unseaworthy, dismantled and sold, and registered as a British merchant-ship under the name of the Etta.§ The Florida was the only other Confederate ship of war which received the permission of the Governor to anchor in the port of Nassau, which is said in the Case of the United States to have been so "lavishly given" to such vessels.

The Florida at Nassau.

The Florida at Nassau.

The reception of the Florida at Nassau was in no way more favourable than that generally accorded to Federal men-of-war visiting the Colony. Indeed, it was rather less so. She came into the harbour of Nassau on the morning of the 26th January, 1863, without previously asking permission; her commander being, as he explained, ignorant of the regulation which rendered such a course necessary. The Fort-Adjutant, as he had done in the case of the United States' vessel Stars and Stripes some months before, came on board to ask for an explanation; and he took the commander of the Florida on shore in his boat, as he had on the former occasion taken the commander of the Stars and Stripes, in order that application might be at once made for the necessary permission. Captain Maffit addressed a letter to the Governor, stating that his vessel was in distress for want of coal and requesting permission to anchor for the purpose of obtaining it. The Governor granted the permission, stating that he did so as thereby according to a Confederate steamer the same privileges which he had formerly granted to Federal steamers. But he desired that the irregularity in delaying to make the request should be pointed out, and that the pilot should be called on to explain how he admitted the Florida without permission.‖ In the case of the Stars and Stripes, the Governor had without any written application given leave to take in coal for a much larger amount than her commander required, and the United States' Consul wrote to thank him for "the permission so graciously accorded."¶

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* See Return of visits of United States' vessels to British Colonies, Appendix to British Case, vol. v, p. 224.

† Appendix to British Case, vol. i, p. 79. Appendix to Case of the United States, vol. vi, p. 98.

‡ Appendix, Case of the United States, vol. i, p. 360.

§ Appendix to British Case, vol. v, pp. 21, 196. The regulation prohibiting the entry of belligerent vessels into British ports for the purpose of being dismantled and sold was only issued in September 1864, more than a year afterwards (see Appendix to British Case, vol. i, p. 467).

‖ Appendix to British Case, vol. i, p. 78. ¶ Ibid., vol. v, pp. 31, 32.

The Florida remained in the harbour about twenty-six hours (not thirty-six, as stated in the Case of the United States*), leaving not later than noon of the 27th of January. Of the exact amount of coal taken on board no record has been found; but it could not have been such an amount as is assumed by the United States. The quantity of coal which the Florida was capable of stowing was but 130 tons;† her consumption at full speed was estimated by British officers appointed to investigate the matter at Bermuda as 15 cwt. an hour, or 18 tons a day. She could not possibly, therefore, have taken on board a three months' supply, as is alleged. This is further proved by the statement, which afterwards appears in the Case of the United States, that "by the middle of the following month her coal was getting low;" and this when we are told that "she ordinarily sailed under canvas," and only used steam in the pursuit and capture of vessels.‡

Reception of Confederate cruizer in British ports.

The Florida at Nassau.

Case of the United States, p. 96

Her Britannic Majesty's Government thinks that enough has been said to show that the partiality alleged to have been shown to Confederate vessels of war by the authorities of Nassau had no real existence. The United States have alluded in their Case to the absence of any but official relations between those authorities and the United States' Consul. Her Majesty's Government is unwilling to dwell upon the reasons (which were not political) for that state of things. It was, undoubtedly, a source of embarrassment to the Governor; and it appears to have created a feeling on Mr. Whiting's part, which coloured all his reports to his Government, and render them far from an accurate representation of the real state of affairs in the Colony. The following extract from a despatch of the Governor shows that there was no indisposition to show hospitality and civility to officers of the United States when he could properly do so:—

"So far from having shown too much sympathy with the South, I believe I might justly be suspected of not having shown enough. I know that I have seen and received more Northern than Southern visitors at Government House during the last season; and that whereas I had invited several Northern officers to dinner, the only Southern officer who called I did not invite."

Execution of the Rules of January 31, 1862, *in other Colonies,*

Execution of the Rules of January 31, 1862, in other Colonies.

Having thus shown the conduct of the authorities at Nassau under the special regulations applicable to that Colony, Her Britannic Majesty's Government proceeds to notice the alleged disregard of the general regulations in the case of visits of Confederate cruizers to other British ports. According to those regulations, no vessel of war of either belligerent was to be allowed to remain in a British port more than twenty-four hours, except in case of stress of weather, or of her requiring repairs or supplies necessary for the subsistence of her crew. No coal was to be supplied to such a vessel beyond the amount sufficient to carry her to the nearest port of her own country; nor was coal to be again supplied to her in any British port, without special permission, within three months after she had last received such a supply in a British port. It has been already explained that the case of the Nashville at Bermuda, in February 1862, did not come within these rules, which had not at the time reached the Colony. The first, and indeed the only instance in which special permission to coal was obtained within three months after a previous supply at a British port, was that of the Florida at Barbados.

The Florida at Barbados.

The Florida at Barbados.

The Florida arrived at Barbados on the 24th February 1863. Her Commander represented to the Governor that his vessel had recently gone through severe weather; that his stock of coal had in consequence been entirely exhausted; and that, unless he could ship some more, and have some lumber to repair the damages his vessel had suffered, he could not go to sea, and would be obliged to land his men, and strip the ship. The Governor granted the permission, limiting the amount to 90 tons, which was certainly not an excessive quantity, considering the distance from the ports of the Southern States.§ In so doing, he was under the impression that he was only granting similar facilities to those previously accorded to the United States' vessel San Jacinto, whose Commander had also asked for special permission to ship fuel, and articles for repairs. The Governor took the

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* Appendix to British Case, vol. i, p. 79. See also extract from "Bahama Herald," Appendix to Case of the United States, vol. vi, p. 334.

† See Report of British Naval Officers at Bermuda, Appendix to British Case, vol. v, p. 11.

‡ Case of the United States, p. 352.

§ Appendix to British Case, vol. i, p. 92.

Reception of Confederate cruizers in British ports.

The Florida at Barbados.

further precaution of writing to the Governors of neighbouring British Colonies, stating the date at which the Florida had coaled. All this he explained to Admiral Wilkes, who visited the island shortly afterwards, and who, after receiving these explanations, made use of them to write him a long letter of complaint. The matter was reported by the Governor to Her Britannic Majesty's Government, and was also represented by Mr. Seward to Lord Lyons. While acquitting the Governor of any intentional disregard of his instructions, the Government were of opinion that, in regard both to the San Jacinto and the Florida, too much latitude had been used in giving the "special permission" contemplated in the regulations; and a despatch was addressed to Barbados, and to other British Colonies in the West Indies, defining the circumstances under which such "special permission" might properly be granted. It was pointed out at the same time that an unauthorized concession to one belligerent was not likely to be accepted, by those to whom it was made, as a justification of a similar concession in the opposite direction.*

Case of the United States, p. 97.

It is now asserted by the Government of the United States that the case of the San Jacinto, referred to by the Governor of Barbados, was not parallel to that of the Florida, inasmuch as the San Jacinto, though she had touched at Bermuda shortly before her arrival at Barbados, had not taken in any coal at the former Colony.† Her Majesty's Government does not dispute this fact, although not aware of it before. But such a circumstance, recently ascertained, as it appears, from the records of the United States' navy, does not in any way affect the fact that the Governor was at the time under the impression that the two cases were similar. It cannot be admitted, as urged by the United States, that the burden is upon Great Britain to establish that a high officer of Her Majesty acted "innocently" on this occasion, or that his explanation was a truthful one. These are matters which clearly ought to be taken for granted, unless there is positive evidence to the contrary, and the more so when, as on the present occasion, every attendant circumstance combines to show that the officer acted in good faith. Still less can it be allowed that "the act, whether done innocently or designedly, was a violation of the duties of a neutral," or that it furnished the United States with any real "cause of complaint against Great Britain." At most it amounted to no more than a somewhat too broad interpretation placed by the authorities of a distant Colony on a rule which had been made, not in compliance with any requirement of international law, but as a matter of convenience; and measures were at once taken to prevent the recurrence of a similar mistake.

The instructions sent to the Governor on this occasion enjoined on him a strict adherence to the regulations, "without any arbitrary concession to either belligerent," as the best means of avoiding misunderstanding and complaints of partiality for the future. The anxiety of the Governor to comply with this direction led to a misunderstanding, of which mention has been made in the Case of the United States. The United States' vessel of war Connecticut touched at Barbados in April 1865, and her commander, Captain Boggs, wrote to the Governor: "I find it necessary to remain a few days for the purpose of overhauling the piston and feed-pump of the engine, and I trust that no objections can be made." It will be seen that the application was rather loosely worded as regards the necessity of the repair. The Governor, in consequence, replied that Captain Boggs knew, of course, the instructions under which they both acted, and that, before giving his sanction, he must request a definite assurance of the inability of the Connecticut to proceed to sea at the expiration of twenty-four hours, and as to the period within which it would be possible to execute the necessary repairs. This was, in fact, no more than a request for a formal application from the Commander of the Connecticut such as would bring that vessel within the letter of the regulations. Captain Boggs, however, somewhat unreasonably interpreted it otherwise. He replied that it virtually refused the permission requested, and that "he could not give such an assurance as was required, inasmuch as an American ship of war could always go to sea in some manner." He left the port, accordingly, without repairing. The Governor reported the matter home at the time, saying that he thought Captain Boggs had placed an ungenerous construction on his letter, but that he did not see how he could have acted otherwise; and, in a despatch lately received, he repeats the same explanation. "The Commodore," he says, "knew perfectly well what my instructions were; and if my words had any meaning at all, it must have been clear to him that I wanted nothing more from him than a justification for acceding to his request."‡

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* Appendix to British Case, vol. i, p. 102.
† Case of the United States, p. 356. Appendix to same, vol. vi, p. 345.
‡ Appendix to British Case, vol. v, p. 1.

Reception of Confederate cruizers in British ports.

The Florida at Barbados.

The Arbitrators will have observed that, in cases where Confederate vessels of war applied for permission to repair, it was frequently the practice of the British Authorities not to depend upon the mere statement of the commander of the vessel as to the necessity for repairs and the time they would take, but to insist on an examination and a report by British officers; and this requirement was, as far as is known, acceded to in all such cases without demur. No instance is alleged of such a precaution having been taken in the case of United States' vessels; and, compared with it, the answer given to Captain Boggs cannot be regarded as matter for complaint. Her Britannic Majesty's Government have only to add that, in addition to the visits of the San Jacinto and Connecticut alluded to above, nineteen other visits of United States' ships of war to Barbados are recorded during the Civil War. Two of these vessels are mentioned as having received permission to take in coal, and none of them appear to have had any reason to complain of their reception. As far as Her Majesty's Government is aware, the visit of the Florida is the sole instance of any Confederate cruizer having received the hospitality of the Colony.

The Florida at Bermuda.

The Florida at Bermuda.

The Florida arrived off Bermuda for the first time on the evening of the 15th of July, 1863, and entered the harbour the following morning. Her commander stated that his vessel was in want of repairs to the hull and machinery, and that he required also a small supply of coal. Of the latter, there was at the time none in the Colony, except in the Government stores, and the military and naval authorities, to whom Captain Maffit successively applied, positively refused to allow him any supply from that source.* Permission to effect repairs in the Government Dockyard was also refused; and Captain Maffit, having stated that his vessel must be considered as detained in distress for want of coal, was warned that the regulations were very strict as to the limitation of time for the stay of belligerent cruizers; that it was necessary that whatever the Florida required to enable her to leave should be provided within the shortest possible period; and that, in the meanwhile, she must leave the port of St. George's for the anchorage at Grassy Bay. The arrival of a vessel from Halifax with a cargo of coal relieved Captain Maffit from his difficulty, and he left the Island on the 25th of July. The vessel which brought the coal is asserted by the United States to have been the Harriet Pinckney, and it is insinuated that the transaction amounted to an infraction of the rule against the establishment of coal depôts in British ports for the use of either belligerent. Her Majesty's Government is at a loss to understand on what ground such an allegation is made. The Harriet Pinckney was, to all appearance, an ordinary trading vessel, in which capacity she visited St. George's five times between January 1863 and February 1864.† There was nothing in the attendant circumstances to raise a suspicion that the coal was sent expressly for the Florida; indeed, the previous conduct of Captain Maffit contradicts such a supposition; nor does the occurrence seem to have given rise to any complaint on the part of the United States' Consul.

On this occasion, through a misconception, the salute of the Florida was returned. It was the only instance in which the flag of the Confederate States received such a courtesy from British authorities. It was disapproved by Her Majesty's Government; and a Circular instruction was sent to all the British Colonies to prevent its repetition.‡

From Bermuda the Florida proceeded to the French harbour of Brest, where she remained five months refitting. On the 26th April, 1864, she visited the French port of St. Pierre, Martinique, where she remained till the 7th May and took in a full supply of coals, provisions, and water.§ On the 14th May, she again appeared off Bermuda, but remained only long enough to land a sick officer. She returned to Bermuda on the 19th of June, 1864, and her commander, Lieutenant Morris, wrote to announce his arrival, stating that he was in want of coals, provisions, and repairs, which last it would be impossible to effect unless he were authorized to proceed to the Government dockyard. Permission to do this was, however, refused. Two British officers were sent on board the Florida with directions to report whether she could proceed to sea without any repairs being made to her machinery, and what time they considered would be necessary to complete such repairs as might be absolutely required, and were capable of being carried out in St. George's harbour.

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* Appendix to British Case, vol. i, pp. 108, 109.

† Ibid., vol. v, pp. 5, 13.

‡ Ibid., vol. i, p. 108; vol. v, p. 129.

§ Ibid., vol. i, p. 131.

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The Florida at Bermuda.

These officers reported, on the 20th of June, that the Florida could "proceed to sea with safety under steam, but under sail was unmanageable with her screw up in bad weather," and they stated that the necessary repairs could be made good there, and, as far as they could judge, would require five days for one man, viz., a diver for two days, and a fitter for three days, or three complete days in all. There were also defects which rendered her main-topmast unsafe, and which could, in their opinion, be made good in two days; they did not state how many men would be required.

The Governor, after consulting with the Admiral on the station, gave permission on Monday the 21st of June for the Florida to remain five days in port, a permission which cannot be considered unreasonable, considering the scarcity of skilled workmen and the possibility evidently contemplated by the committee of officers that it might be necessary to employ the same man as fitter and diver. The five working days expired at noon on Monday the 27th June, and on the evening of that day the Florida left the port. Among the documents produced by the United States is a bill for carpenter's work sent in to the Commander of the Florida, which shows that four carpenters were employed on her for four days. Taking into account the small quantity of materials charged for, which show that the repairs could not have been extensive, the probability that unskilled workmen were employed, and the fact previously mentioned, that the number of men required to repair the main-topmast is not stated in the report of the officers, Her Majesty's Government does not see that any proof is produced of an abuse of the permission given. The report of the officers went on to state the hourly consumption of coal of the Florida's engines, and they estimated that she could reach the port of Mobile with a supply of 100 tons. The Governor received a written assurance from Lieutenant Morris that the first Confederate port he expected to make was Mobile, and that he had taken on board about 80 tons of coal, more or less. The United States produce what purports to be a voucher for 135 tons of coal supplied to the Florida on this occasion. If this voucher is correct, Her Majesty's Government can only say that not only did Lieutenant Morris deceive the Governor, but that the Florida took on board more coal than, according to the estimate of the British officers, she had room to carry. The simple fact is, that the Governor, who had recourse to the advice of the Admiral on the station, conscientiously endeavoured to enforce the regulations.*

The Florida left Bermuda, as has been said, on the 27th of June. Five days afterwards she re-appeared, for the alleged purpose of giving up two British soldiers, deserters, who had been found on board, and an endeavour was made by her commander to obtain more coal to replenish the amount he had consumed, said to be 15 tons. This was peremptorily refused, and the barge containing the coals was brought back, though not, it is believed, until Lieutenant Morris, who had begun coaling without permission, had succeeded in shipping about $7\frac{1}{2}$ tons. The Florida then left, and did not again visit a British port.*

The Chickamauga at Bermuda.

The Chickamauga at Bermuda.

Case of the United States, p. 113.

The other Confederate cruizer whose treatment at Bermuda forms a subject of complaint on the part of the United States, is the Chickamauga. Of this vessel it is said that "on the 8th of November she was allowed to come into the harbour, and permission was given for a stay of five days for repairs, and also to take on board 25 tons of coal, though she had at that time 100 tons in her bunkers;" that "she actually stayed seven days and took on board 82 tons."† The authority given for this is an extract from a manuscript diary of a midshipman on board the vessel; but the quotation is incorrect, for the amount stated in the diary is not 82 but 72 tons.‡ Her Majesty's Government may remark that the evidence derived from a midshipman's journal can hardly be regarded as of much value. It has been seen elsewhere that the passages in the published journal of an officer of the Shenandoah, quoted or referred to by the United States, were inaccurate in matters relating to that vessel, of which he had no absolute personal knowledge, and this seems to be the case in the present instance.

The Chickamauga arrived at Bermuda on Monday, the 7th November, 1864, and her commander asked permission to coal and repair machinery. Two officers of the British Navy were sent on board to report what repairs were required, the quantity of coal in the vessel, and the additional quantity, if any, which would be required to enable her to

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* Appendix to British Case, vol. i. p. 133; vol. v, pp. 4, 9–12. † Case of the United States, p. 415.
‡ Appendix to Case of the United States, vol. vi, p. 726.

Reception of Confederate cruizers in British ports.

The Chickamauga at Bermuda.

reach the nearest port of the Confederate States. These officers reported on Wednesday, the 9th of November, that the repairs necessary to render the vessel fit for sea would take four or five days to complete, that she had about 75 tons on board, that her daily consumption was 25 tons, and that they considered 25 tons more would enable her to reach the nearest Confederate port.* Permission was, therefore, given to her commander to take the vessel into St. George's Harbour, to remain there till Tuesday, the 15th instant (that is to say, for a space of about five working days), and to take on board 25 tons of coal. The commander objected that the quantity of coal allowed was insufficient, and asked for permission to take in 25 tons more, but this was refused.† Orders were given to the revenue officer in charge to take care that the specified amount was not exceeded, and the Tribunal will find in the Appendix the affidavit of the officer placed on board for this purpose on the night when the Chickamauga was coaling, in which it is positively affirmed that she did not receive more than 25 tons on that occasion, and a conviction is expressed that she did not get more at Bermuda.‡ Other concurrent testimony is also given; but it appears that the harbour was at the time crowded with shipping, and at this distance of time it is not possible absolutely to prove that by some illicit means the Chickamauga may not have succeeded in obtaining an extra supply. Her Majesty's Government maintains however that, on this occasion (as was observed by Earl Russell with regard to the previous visit of the Florida), "although some disposition was manifested to evade the stringency of Her Majesty's regulations, the most commendable strictness and diligence in enforcing those regulations was observed on the part of the authorities."§

Having thus noticed the visits of Confederate cruizers to Bermuda, it is necessary to make some mention of the acts and the treatment of United States' vessels of war at that Colony. Admiral Wilkes arrived off the island on the evening of the 26th September, 1862, on board the Wachusett, accompanied by the gun-boats Sonoma and Tioga. The Wachusett and Tioga entered the harbour on the morning of Saturday the 27th, and requested permission to take on board about sixty tons of coal. Upon various pretexts the departure of these vessels was delayed until the 1st of October when the Tioga left. An accident to the boiler of the Wachusett deferred her departure to the next day. The Sonoma, in the meanwhile, continued to cruize in the offing by day, and in the evening anchored close to the narrow entrance of the harbour, and this proceeding was persisted in, notwithstanding the Governor's remonstrances. Admiral Wilkes requested permission for the Sonoma to come into the harbour, for 36 hours, to repair; and this was granted. The Sonoma accordingly entered on the 1st of October, and proceeded to take in coal. It had not been understood that permission for that purpose was requested; the squadron, moreover, had left the United States but four days before their arrival at Bermuda, and the Sonoma's supply of coal had been since expended in cruizing off the harbour; yet she was allowed to renew her supply. The Tioga, in the meanwhile, took up the same position which the Sonoma had previously occupied outside the harbour, and these two vessels remained cruizing off the port of St. George's, until the 12th of October. Contrary to the ordinary courtesy on such occasions, the commander of the Sonoma placed sentries on British territory on the wharf from which she was taking coals. The British Minister at Washington was instructed to address a remonstance to the Government of the United States upon the subject of Admiral Wilkes' proceedings. Mr. Seward replied, stating that Admiral Wilkes' conduct must have been misunderstood; that his reports gave abundant evidence of feelings altogether just and liberal towards the British authorities, and respectful and cordial towards the British Government. He promised, however, an investigation into the circumstances, and he subsequently communicated to Lord Lyons, with the expression of a hope that it would prove satisfactory, a despatch from Admiral Wilkes, denying that he had given any cause of complaint. The amount of coal taken in by Admiral Wilkes' squadron amounted to 239 tons.

An allusion is made in a foot-note at page 324 of the Case of the United States, to the failure of the United States' vessels Keystone State and Quaker City to obtain coal at Bermuda in December 1861. At that time there was no restriction on the coaling of belligerent vessels. All that happened was, that the British Admiral declined to supply the two vessels mentioned from the Government stores, not having a sufficient stock for his own vessels. A similar answer had, in the foregoing October, been returned to the

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* Appendix to British Case, vol. v, pp. 135, 136. † Ibid., pp. 137, 138. ‡ Ibid., p. 139.
§ Appendix to Case of the United States, vol. vi, p. 368.

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United States' vessels at Bermuda.

Commander of the Nashville, who had supplied himself from private sources, but this, on account either of the scarcity or the high price of coal in the colony, the United States' officers did not do. Twelve other visits of United States' vessels of war to Bermuda are recorded. Five of these vessels exceeded the twenty-four hours' limit of stay; three are stated to have refitted, two to have coaled. Among these was the Wachusett, which returned to the Colony in May 1863, and obtained permission to coal and repair.* In the case of another vessel, the Mohican, which put in on her way from Philadelphia to the West Coast of Africa, the Governor not only granted an exceptionally large supply of coal, beyond the quantity authorized by the regulations, but promised the assistance of the Government dockyard officials towards the completion of her repairs, and his conduct in so doing was approved by Her Majesty's Government.†

The quantity of coal taken by the Mohican seems slightly to have exceeded the amount named by her commander. He asked for permission to ship 100 tons, but is stated to have received 104. The difference is not material except to show that the most conscientious officer may chance to take a little more than the amount at which he has roughly estimated his requirements.

Her Majesty's Government thinks that enough has been said to convince the Tribunal that, as regards the Colony of Bermuda, no accusation of undue partiality towards the Confederate States can be fairly made.

The Alabama at Jamaica.

The Alabama at Jamaica.

Of the visit of the Alabama to Jamaica there is little to be said. She arrived on the 20th of January, 1863, having recently engaged and sunk the United States' ship of war Hatteras. Her need of repairs was obvious, as she had six shot holes in her hull at the water line. She was received as a vessel of war, as she had previously been at the French Colony of Martinique, and she obtained permission to make repairs and take in coal. The repairs were completed on the 25th of January, on the evening of which day she went to sea. Seven vessels of the United States are recorded to have visited Jamaica during the Civil War, remaining for periods of from three to ten days. Three of them received coal; the quantity supplied is unknown.‡

The Alabama, Georgia, and Tuscaloosa at the Cape of Good Hope.

The Alabama, Georgia, and Tuscaloosa.

Concerning the visits of the Alabama, the Georgia, and the Tuscaloosa to the Cape of Good Hope in August and September 1863, every material particular has been placed before the Arbitrators in the Case of Great Britain, nor is there anything on the subject in the Case of the United States which seems to call for a further reply than will be found in the statement of facts thus given. The grounds have been stated on which it was considered by Her Majesty's Government that the Governor and his legal advisers had been in error in determining that the Tuscaloosa must be regarded as a duly commissioned ship of war. An account has also been given of the seizure of that vessel, and of the orders which were given by the Government for her release, on the special ground that, the vessel having been once allowed to enter and leave the port as a recognized ship of war, and no warning having been given to the officer in charge of her of any change of intention on the part of the authorities, he was fairly entitled to assume that she would be again received in the same character. The Tuscaloosa did not, however, return into the hands of the Confederate Government, but was eventually handed over at the end of the war to the United States' Consul at Cape Town.§

Of the amount of coal supplied to the Georgia at the Cape of Good Hope there is no record. It would seem that 180 tons were forwarded to Simon's Bay for the use of the Alabama on the 19th September, 1863. The Alabama proceeded to the Indian Ocean, and took in a fresh supply (250 tons) at Singapore on the 23rd December. She returned to the Cape of Good Hope on the 20th March, 1864, and it is stated in the Case of the United States that, on the 21st, she began taking on board fresh supplies of coal. The interval between the two supplies is thus made out to be two days less than three calendar months, and this is adduced as a "fresh violation of the duties of Great Britain as a

Case of the United States, pp. 86, 105.

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* Appendix to British Case, vol. v, p. 226.
† Ibid., p. 32.
‡ Ibid. p. 231.
§ British Case, p. 115.

neutral."* The authority given is a book entitled "My Adventures Afloat," published by Captain Semmes, the commander of the Alabama. One of the passages referred to is as follows:—

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"We entered Table Bay on the 20th of March, and on the next day" (*i.e.*, the 21st) "we had the usual equinoctial gale." * * * "The gale having moderated the next day" (*i.e.*, the 22nd) "lighters came alongside and we began coaling."†

The Alabama at the Cape of Good Hope.

The Alabama did not, therefore, begin coaling at Table Bay on the 21st, but on the 22nd of March, 1864.

Again, on referring to another book published by Captain Semmes, "The Cruize of the Alabama and Sumter." the following passage is found relative to the visit of the Alabama at Singapore:—

"*Tuesday, December* 22.—At 9.30 A.M., the pilot came on board, and we ran up to the New Harbour alongside of the coaling depôt and commenced coaling."‡

And on referring to the passage of the "Adventures Afloat," on the same subject, it will be found stated that the "coaling lasted ten hours."§

It is proved, therefore, from the very authority quoted by the United States, that the Alabama had taken in her last supply of coal not on the 23rd but on the 22nd of December, 1863, and that the specified period of three months had exactly elapsed before she began taking in a fresh supply. But if the dates had really been as alleged, the circumstance would have proved nothing against the Colonial authorities, still less against Great Britain. The captain of the Alabama applied for permission to coal on the ground that he had last coaled at Singapore on or about the 21st of December. The Governor and Admiral could have had no means of checking the date to a single day, and the permission was granted on the faith of Captain Semmes' statement. That statement was in every way consistent with probability, and with the facts as far as they were or could be known at Cape Town. It would surely be nothing less than ridiculous that an asserted "violation of the duties of Great Britain as a neutral" should be found to depend on a doubtful mistake of a single day, on the difference between lunar or calendar months, or on the fact that a particular February fell in leap year.

There are records, on the other hand, of eleven visits of United States' men-of-war to the Cape of Good Hope, three of which received coa.. at Her Majesty's Government will only call the attention of the Tribunal to one of these, the Vanderbilt. This vessel obtained at the British Colony of St. Helena on the 18th of August, 1863, 400 tons of coal. She arrived at Simon's Bay, Cape of Good Hope, on the 3rd of September, rather more than a fortnight afterwards, and remained until the 11th, taking on board 1,000 tons of coal. She visited the British Colony of Mauritius a fortnight later, on the 24th of the same month, and there remained till the 10th of October, shipping a fresh supply of 618 tons. On the 22nd of that month, only twelve days after her departure from Mauritius, she re-appeared at Cape Town, and her commander applied for permission to remain five or six working days, for the purpose of making necessary repairs, and also to get a supply of fuel. The Governor, as the Captain reports, "took a day to decide," and then replied, granting the permission for the Vanderbilt to remain in harbour, but stating that he did not think his instructions would admit of his giving permission to her to coal, especially as it was notorious that the three supplies so recently received had been expended in cruizing.‖ She thus committed in six weeks two apparently deliberate breaches of the regulations, and attempted a third. The case of the Vanderbilt does not certainly show any hostile rigour on the part of the authorities at the British Colonies which that vessel visited.

Recapitulation.

Recapitulation.

Her Majesty's Government has now, it is believed, examined all the instances brought forward in the Case of the United States to support the charge of "excessive hospitalities" on the part of British authorities to Confederate cruizers and of "discourtesies to vessels of war of the United States." The examination has shown how groundless is that charge, and with how little reason it can be said that the rules laid down as to the treatment of belligerent vessels "were often utterly disregarded" in the case of Confederate ships of war, and

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* Case of the United States, pp. 316, 386. † Page 744. ‡ Page 234.
§ Page 715. ‖ Appendix to Case of the United States, vol. vi, pp. 145, 146

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"rigidly enforced against the United States." A few words only are required to complete the comparison. During the course of the Civil War ten Confederate cruizers visited British ports. The total number of such visits was twenty-five, eleven of which were made for the purpose of effecting repairs. Coal was taken in at sixteen of these visits, and on sixteen occasions the limit of stay fixed by the regulations was exceeded. In one of these cases, however, the excess was no more than two hours, and in another, the delay was enforced in order to allow twenty-four hours to elapse between the departure of a United States' merchant-vessel and that of the Confederate cruizer. On the other hand, the returns which have been procured of visits of United States' vessels of war to ports of Great Britain and the Colonies, though necessarily imperfect, show an aggregate total of 228 such visits. On thirteen of these, repairs were effected; on forty-five occasions supplies of coal were obtained; and the twenty-four hours' limit of stay was forty-four times exceeded. The total amount of coal obtained by Confederate cruizers in British ports during the whole course of the Civil War, though it cannot be ascertained with accuracy, may be estimated to have amounted to about 2,800 tons. The aggregate amount similarly supplied to vessels of the United States cannot be estimated, from the want of data as to the supplies in many cases, but those cases only in which the quantities are recorded show a total of over 5,000 tons; and this, notwithstanding the United States navy had free access to their own coaling depôts, often close at hand. In one case noticed above, a vessel of war of the United States, the Vanderbilt, alone received 2,000 tons of coal at different British ports within the space of less than two months, being more than two-thirds of the whole amount obtained from first to last by Confederate vessels.

It has been seen that of the three instances in which the United States assert that Confederate vessels were allowed to coal in contravention of the rules of January 31, 1862, one alone, the coaling of the Florida at Barbados, can in any way be considered a departure from those rules, and that only in a limited sense.

Other instances of infractions of the rules by United States' vessels are known to have occurred besides that of the Vanderbilt. The case of the Tuscarora has already been alluded to. The Kearsarge, after receiving 91 tons of coal at Dover, on the 2nd of August, 1864, coaled again at Barbados, on the 23rd of October. The Sacramento took in 87½ tons at Cork between the 28th July and the 1st August in that year. She obtained 25 tons more at Plymouth, on the 16th of August, and 30 tons more were sent out to her from Dover by the United States' Consul, in a vessel which left without clearance for the purpose, on the 23rd of the same month. It was not thought necessary to take any notice of this occurrence at the time, but a regulation was afterwards made to prevent such a practice being resorted to in future for the purpose of evading the regulations. The United States' vessel Wyoming made use of the port of Hong Kong in a similar manner, anchoring just outside of British waters, and obtaining coal and supplies in boats. This she did in February 1863, and again in February 1864. On the second occasion she is believed to have anchored within the British limits. She obtained 165 tons of coal, having been supplied in the previous December with 120 tons at the British Colony of Labuan; and this, although there was a depôt for the United States at Macao. The Narraganset again is recorded to have coaled twice within three months at Esquimaux Point, in British Columbia—once on the 23rd of November, 1863, the second time in January, 1864.*

Her Majesty's Government wishes to be understood as quoting these instances not in recrimination but in self-defence. There may not improbably have been, in some of these cases, reasons to excuse a departure from the strict letter of the regulations. All that it is sought to prove is that those regulations were not enforced against the vessels of the United States in any invidious manner; that the officers of the United States' navy were treated with courtesy and leniency, even when, on some occasions, their conduct did not show any very scrupulous respect for the conditions on which the hospitality of British ports was extended to them; and that the facts by which the United States seek to prove a lax observance, to their disadvantage, of the duties of neutrality, might with more justice be invoked in support of a directly opposite conclusion.

Her Majesty's Government will ask the Tribunal to suppose the case reversed—that the vessels of the Confederate States had been allowed the indulgences which were shown to those of the United States, and that United States' vessels had been subjected to precautions such as were often enforced against Confederate cruizers. A moment's reflection will show that, if complaints and claims are to be made on such grounds, the United States would have had much more reason to make them on such a supposition, than they have under the circumstances as they really stand.

* See Return of Visits of United States' vessels to British Ports. Appendix to British Case, vol. v, pp. 228, 233, 234.

Her Majesty's Government regrets to have been compelled to lay before the Tribunal in this section a number of details which have so slight a bearing on the questions referred to it, and many of which are so trivial in themselves. But it was due to the Arbitrators, as well as to the United States, that this long series of accusations should not be left unanswered.

Reception of Confederate cruizers in British ports.

Recapitulation.

Course pursued by other Countries.

Before quitting this subject, it may be well to notice briefly the course which was pursued under similar circumstances by other Governments, whose conduct the United States have placed in contrast with that of Great Britain, and against whom they declare that they have no serious cause of complaint.*

Course pursued by other countries.

Holland.

1. To instance, in the first place, the conduct of the Netherlands. The Sumter twice visited the ports of Dutch possessions in the West Indies within the space of six weeks; that of St. Anne's, Curaçoa, on the 13th July, 1861, that of Paramaribo on the 19th August. On the first occasion she remained eight days in port; on the second eleven days. In both instances she took in more than 100 tons of coal. At the British port of Trinidad the Sumter remained only six days and took in only 80 tons of coal. The United States' Government addressed, as Mr. Seward said, "very serious remonstrances" to the Netherlands Government on the subject. The essence of those remonstrances was, that the Sumter was not merely a privateer but a pirate. The Netherlands Government, on the other hand, maintained that she was a ship of war. It decided, however, to issue orders that no armed vessel of either belligerent should be allowed to remain more than forty-eight hours in Dutch ports, or to take in more coal than would be sufficient for twenty-four hours' consumption. Although the United States' Government was expressly warned that this restriction must apply to vessels of their navy, as well as to those of their opponents, the regulation was accepted as satisfactory, until applied to an United States' ship, the Iroquois, which touched at Curaçoa in November 1861. On learning the restrictions placed upon his visit, the commander of the Iroquois declined to enter the port upon such terms, and in this decision he was sustained by his Government, who called for a repeal of the obnoxious regulation. The Netherlands Government, it appears, had already revoked the regulation, at the instance of the Governor of Curaçoa, and they explained that no restrictions would in future be placed on the stay or supplies of American men-of-war in Dutch ports.† The United States Government, however, were not satisfied. In February 1862 Mr. Seward again directed the United States' Minister at the Hague to call attention to the "subject of the intrusion of piratical American vessels seeking shelter in the ports of the Netherlands and their Colonies."

Case of the United States, p. 126.

"If," he said, "you cannot obtain a decree excluding them altogether, it is thought that the Government will have no hesitation in restoring the restrictive policy which was adopted by it under the representation of its foreign affairs by Baron Van Zuylen."‡

The Netherlands Minister for Foreign Affairs replied, in a long and able note, in which he once more justified the attitude of his country, and declined to return to the former policy of restriction.

"In this regard," he wrote, "I permit myself to observe to you, that I could not understand how your Government could desire the re-establishment of measures which actually were, and would again, be applicable to both parties, and which were at the time the cause why the Union ship Iroquois would not enter the Port of Curaçoa under the rule of the said restrictive measures. . . If the instructions given before the month of December, 1861, were now returned to, the Government of the Netherlands might not only be taxed, with good reason, with trifling, but would hurt its own interests, as well as those of the Union, considering that the consequence of the said instructions would be, as has been remarked in the communication of Baron de Zuylen, dated October 29, 1861, that the vessels of war of the United States, also, could no longer be able to sojourn in the Netherland West Indian ports more than twice twenty-four hours, nor supply themselves with coal for a run of more than twenty-four hours."§

It is difficult to understand on what ground Great Britain is to be held liable for the acts of the Sumter, while the course pursued by Holland is considered to give the United States no serious cause of complaint. On looking for the reasons assigned, they are found to be as follows:—

Ibid., p. 126.

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* Case of the United States, p. 462.

† Appendix to British Case, vol. vi, pp. 91, 94.

‡ Ibid., p. 95.

§ Appendix to British Case, vol. vi, p. 99.

Reception of Confederate cruizers in neutral ports.

"The Government of the Netherlands forbade privateers to enter its ports, and warned the inhabitants of the Netherlands and the King's subjects abroad not to accept letters of marque. The United States have no knowledge that these orders were disobeyed."*

Course pursued by other countries.

Holland.

Her Majesty's Government are not aware that, among the numerous charges brought against Great Britain in the Case of the United States, it is anywhere alleged that a privateer of either party entered a British port, or that any British subject accepted a letter of marque during the war. It is, indeed, true that in official correspondence and in other documents and speeches during the war, it was the common practice of the Government and citizens of the United States to apply to the Confederate cruizers the denomination of "privateers" as well as that of "pirates;" but it is certain that none of these cruizers were privateers in the legal and only proper sense of that term.

Brazil.

2. Let us now turn to the course adopted by Brazil. The Sumter, after leaving Paramaribo, touched at the port of San Juan de Maranham, where she remained ten days, and took in 100 tons of coal. The United States' Consul at that port addressed a protest to the Governor, but the latter replied that the Sumter must be regarded as a belligerent vessel, and as such allowed to supply herself with coal. A long correspondence followed between the Brazilian Government and the United States' Minister, who denounced the conduct of the President of the Province of Maranham as "an unfriendly act towards the United States, and a gross breach of neutrality,"† but the Brazilian Government maintained that their officer had been right, that the Confederate States must be regarded as belligerents, and the Sumter as a ship of war. When, in June 1862, after more than seven months' discussion, the Marquis d'Abrantes, who had recently become Brazilian Minister for Foreign Affairs, wrote to terminate the controversy, and observed that nothing had resulted to alter the relations of friendship and good understanding between the two countries, the United States' Minister at once replied in a note, of which he stated the sole object to be, "to point out that, so far from nothing having occurred to disturb the good feeling upon which is based the friendly relations between the United States and Brazil, the whole course of your predecessor in relation to the visits of the pirate Sumter to Maranham, and the present attitude of Brazil towards the piratical vessels belonging to the rebel States and to our own national vessels, is considered by the Government of Washington untenable, unjust, and intolerable." In a despatch which had already been communicated to the Brazilian Government, Mr. Seward had urged that further restrictions should be placed on the stay of Confederate cruizers in Brazilian ports. The passage to this effect, which the United States' Minister again brought to the notice of the Brazilian Government, was as follows:—

"In the meantime it is proper to remark that every maritime Power which has recognized the insurgents as a belligerent, except Brazil, has, on the other hand, adopted stringent means to prevent the entrance of piratical vessels into their harbours, except in distress, and has forbidden them remaining there more than twenty-four hours, or receiving supplies which would enable them to renew depredations upon our commerce.

"The United States do not say that such measures on the part of Brazil would be satisfactory, nor can they consent to ask Brazil for less than the absolute exclusion of pirates from her harbours. Yet such measures, if adopted, would bring Brazil upon the same ground in relation to the United States which is occupied by other maritime Powers, and thus would mitigate the discontent which you are authorised to express."‡

With this request the Government of Brazil did not think fit to comply. The Regulations issued by it in August 1861 did not restrict the stay of belligerent vessels in Brazilian ports, unless they came in with prizes. The Regulations also permitted the taking in of victuals and naval provisions indispensable for the continuation of the voyage, without placing any specific limit on such provisions, or fixing any period within which a fresh supply should not be granted. The Brazilian Minister for Foreign Affairs called the attention of the United States' Minister to the principles of neutrality laid down in these regulations as "being perfectly identical with those which are adopted and followed by other maritime Powers."§

In April and May 1863 the Florida, Georgia, and Alabama visited different ports of Brazil, and remained there for some time coaling and repairing. The Alabama, having made captures within the territorial waters of Brazil, in the neighbourhood of the island of Fernando de Noronha, was ordered by the President of Pernambuco, on the 27th of April, to put to sea within twenty-four hours, and left accordingly. She reappeared, however, in

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* Case of the United States, p. 463.
‡ Ibid., p. 40.
† Appendix to British Case, vol. vi, p. 17.
§ Appendix to British Case, vol. vi, p. 42.

Reception of Confederate cruizers i neutral ports.

Course pursued b other countries.

Brazil.

the harbour of Bahia on the 11th of May, and remained there fourteen days. These proceedings gave rise to further remonstrances on the part of the United States' Minister, who protested against any of the three vessels being admitted into Brazilian ports, and maintained that the Alabama should have been seized and detained at Bahia. The Brazilian Government replied that the course pursued towards these vessels had been right; that they must be received on the same terms as cruizers of the United States; and that the President of Bahia could not do otherwise than receive the Alabama in that port in the absence of positive evidence of her having infringed the neutrality of Brazil. This, it was stated, was not forthcoming at the time, the investigation of the subject being still in progress.

Instructions were however issued by the Government of Brazil, in June 1863, defining the construction to be placed on the Regulations of August 1861, and the precautions to be taken for their observance. With regard to the limitation of supplies to such as were necessary for the continuation of the voyage, it was stated that this provision presupposed that the vessel was bound for some port. Such presupposition would not hold good if the same vessel should seek to enter a port repeatedly, or if, after having procured supplies in one port, she should enter another immediately afterwards under the same pretext, except in the case of overruling necessity. Any vessel committing a violation of neutrality was to be at once compelled to leave the waters of Brazil; and the Alabama, having been guilty of acts of this nature, was not again to be received in any port of the Empire.

The Florida, against which no such breach of neutrality had been charged, returned to Brazil in August 1864, and at Bahia was again received as a vessel of war.

It will be seen, then, that the principles on which the Regulations of the Brazilian Government were framed, were the same in substance as those applied by Great Britain. It was considered that Confederate vessels must be received on the same footing as those of the United States; that they must be allowed the supplies necessary for the voyage on which they were engaged; that the seizure or detention of such a vessel would be a breach of neutrality; and that, to justify even her dismissal from a Brazilian port, evidence of a violation of Brazilian neutrality committed by her as a belligerent vessel must first be obtained.

On these conditions, the Sumter, Florida, Georgia, and Alabama were admitted to Brazilian ports. The last-named vessel having captured and burnt prizes within the waters of Brazil, instructions were issued to exclude her for the future. A similar prohibition was issued against the Shenandoah, not from any doubt as to her status as a ship of war, but on the ground that her Commander had violated the seal of the Brazilian Consulate. In neither case, however, did any occasion occur for enforcing the prohibition, as the Alabama did not return to the coast of Brazil after she left Bahia, nor did the Shenandoah ever visit a Brazilian port.

Russia.

3. "The Russian Government," it is said by the United States, "ordered that even the flag of men of war belonging to the seceded States must not be saluted."*

Case of the United States, p. 126.

Her Majesty's Government itself issued similar orders addressed to all Governors of British Colonies.† These orders were as follows :—

(Circular.)

"Sir, "*Downing Street, January* 11, 1864.

"Her Majesty's Government have had occasion to consider whether salutes can properly be exchanged between the forts in Her Majesty's Colonies and vessels of war of the Confederate States.

"I have to instruct you that, in case the Commander of any such vessel should offer you a salute, it will be your duty to decline it; and that if the salute should be fired without having been previously offered, it should not be returned.

"In each case the Commander of the vessel should be informed that the reason for declining to receive or to return such salutes is, that the Confederate States have not been acknowledged by this country otherwise than as belligerents.

"I have, &c.
(Signed) "NEWCASTLE."

The incident which gave occasion to this is stated in the Case of Great Britain, page 70.

France.

4. The French authorities received the Sumter, Florida, Alabama, and Georgia in French ports on the footing of men of war, and allowed them to take in supplies of coals and provisions. The Florida and Georgia were allowed to remain several months at Brest and Cherbourg repairing. When the United States' Minister at Paris protested against the Florida receiving repairs of her machinery, on the ground that she was a good

* Case of the United States, p. 464.

† Appendix to British Case, vol. v, p. 129.

Reception of Confederate cruizers in neutral ports.

Course pursued by other countries.

sailer, M. Drouyn de Lhuys replied that "if she were deprived of her machinery she would be *pro tanto* disabled, crippled, and liable, like a duck with its wings cut, to be at once caught by the United States' steamers. He said it would be no fair answer to say the duck had legs, and could walk or swim."* He further justified the permission given to her to repair in a Government dock, there being no commercial dock at Brest. The Florida having discharged 70 or 75 men after she came into Brest, the French Government decided not to issue any order prohibiting an accession to her crew while in port, inasmuch as such accession was necessary to her navigation.†

The Rappahannock.

Case of the United States, p. 79.

Attention has been called in the Case of the United States to the treatment of the Rappahannock at Calais, as forming a contrast to the reception of Confederate vessels in British ports.‡ This vessel, an old despatch-boat, originally called the Victor, had been sold out of the British navy as worn out and unserviceable. She appears to have passed from the hands of her purchasers into those of agents of the Confederate States, who, fearing discovery, hurriedly carried her off in a condition unfit for sea, and took her into the harbour of Calais as a Confederate ship of war, though neither equipped, manned, nor armed. The United States' Minister at Paris urged that this was an exceptional case, and such in fact it was. Writing to M. Drouyn de l'Huys on the 4th December, 1863, he said:—

> "It is quite evident that this vessel occupies a position which differs from either the Florida or Georgia. She has left her port on the other side of the Channel voluntarily, without papers, and ran directly across to a neighbouring port, within which she hopes to be protected until her equipment is completed, and her officers and crew ready. On this statement of facts no argument is necessary to show that permission from the French authorities to carry out her purpose would be a violation of neutrality."§

The French Government replied that the Rappahannock appeared to have been compelled by unforeseen circumstances to take refuge in French waters, that she could not therefore be refused an asylum, but that the facilities accorded to her would be limited strictly to what was required for the equipment and seaworthiness of an ordinary vessel of commerce. The United States' Minister continued to urge the exceptional nature of the case, and, in deference to his representations, special precautions were taken to prevent any warlike equipment of the vessel. It was decided that she should not be allowed to depart without first obtaining permission, and, in order to guard against any attempt of such a kind, a gun-boat was stationed to watch her. The repairs were proceeded with, and changes were made among the crew without adding to their number, for some time. Subsequently, however, it was discovered that her crew had been nearly doubled, and the permission for her departure was on this account provisionally refused. As she had been quite unfitted for war on her arrival, these measures rendered her practically useless for the Confederate service, and her officers determined to abandon the attempt to employ her, and to leave her in the port of Calais.‖

The Stonewall.

Attention has also been called to the case of the Confederate steam-ram Stonewall. That vessel was one of six ships built for the Confederate Government in France under a contract with Captain Bullock, to be paid for out of the proceeds of the Confederate loan issued through the agency of Messrs. Erlanger in Paris. According to French law, the permission of the Government is required before vessels constructed in French ports can be armed for war, and this permission M. Arman, the builder of the vessels, had procured, on the pretext that they were intended for employment in the China Seas. When the United States' Minister laid evidence before the French Government of the real purpose for which these vessels were designed, the authorization to arm them was withdrawn, and an assurance was given that they should not be allowed to pass into the hands of the Confederate Government. M. Arman was, however, allowed to proceed with the construction of them, and they were eventually disposed of to different neutral Governments. One of them was sold conditionally to the Danish Government, but rejected by the officer appointed by that Government to inspect her at Bordeaux, as not coming within the terms of the contract. Permission was obtained to send her to Copenhagen, from whence, the Danish Government having confirmed the decision of their officer, she returned to the French coast, shipped a crew, arms, and a supply of coal at the small island of Houat, off St. Nazaire, and proceeded on her voyage as the Confederate steamer Olinde or Stonewall. The United States' Minister at Paris thought, probably with justice,

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* British Case, p. 71.

† Appendix to British Case, vol. vi, p. 136.

‡ Case of the United States, pp. 292, 293.

§ Papers relating to Foreign Affairs, 1863-64, vol. iii. p. 4.

‖ Appendix to British Case, vol. ii, p. 671. Papers relating to Foreign Affairs, 1863-64, vol. iii, pp. 19, 21, 23, 32, 35, 41, 44, 51, 53, 57, 81.

that there were grounds for believing that the intention of using her for the Confederate service had been formed before she left France, and that the sending her to Copenhagen was a mere pretext; and the French Government ordered an investigation into the circumstances; but it expressly disclaimed any responsibility for what had occurred, and declined to interfere to procure the detention of the Stonewall in the Spanish port of Ferrol, to which she had proceeded.

5. The Stonewall arrived at Corunna on the 3rd of February, 1865, from whence she removed to the neighbouring port of Ferrol. In January 1862, when the Sumter arrived in the port of Cadiz, the Spanish Government had decided that she must be allowed to make such repairs as were absolutely necessary, and had for that purpose allowed her to be placed in a Government dock for two days, notwithstanding the protest of the United States' Minister. The Government came to a similar conclusion in the case of the Stonewall, and she remained at Ferrol refitting for sea till the 24th of March :—

"The Government of Her Majesty," wrote M. Benavides, "could not disregard the voice of humanity in perfect harmony with the laws of neutrality, and does not think they are violated by allowing a vessel only the repairs strictly necessary to navigate without endangering the lives of the crew."*

The United States' war-steamers Niagara and Sacramento had in the meanwhile arrived at Corunna, from whence they kept watch on her movements. From Ferrol they followed her to Lisbon, the commander of the Niagara considering the Stonewall too formidable to cope with at sea in calm weather.†

At Lisbon the Portuguese Government allowed her to remain twenty-four hours and take in a supply of coal. On this latter point, the Foreign Minister of Portugal observed, in reply to the representations of the United States' Minister—

"Regarding the supply of coal, against which you insist, allow me to observe that the vessel being a steamer, His Majesty's Government could not avoid with good foundation that she should be provided with that article, for the same reason that it could not deny to any sailing-vessel in a dismantled state to provide itself with sails."‡

The Stonewall next proceeded to the Spanish island of Teneriffe, and from thence to Havana, where she arrived on the 11th of May, and where, at the close of the Civil War, she was surrendered to the Spanish authorities by her Commander on the payment of $16,000. By the Spanish Government she was handed over to that of the United States. The latter repaid the sum expended in obtaining possession of her.

In the conduct of other Powers, when compared with that of Great Britain, there is certainly nothing to justify the United States in preferring claims against the latter for undue partiality to Confederate cruizers, while at the same time disavowing any ground of complaint against the former. It may suit the United States to give this assurance for the purposes of the present Arbitration, but no such assurance can be given for the future. If the charge against Great Britain is to be held valid in the present instance, it is impossible to say what line of conduct, however scrupulous, however courteous, will protect a neutral Power from demands for compensation from one or the other, or even from both of two belligerent parties.

* Papers relating to Foreign Affairs, 1865-66, part ii, p. 524. † Ibid., p. 521. ‡ Ibid., part iii, p. 113.

Part X.

Conclusion.

PART X.

Conclusion.

Recapitulation of the Argument for Great Britain.

Recapitulation of the argument for Great Britain.

HER Majesty's Government has deemed it convenient, both in the Case which it has previously presented, and in this Counter-Case, to place before the Arbitrators, as clearly as possible, the nature and general limits of the questions which they are about to decide.

The comparatively novel character of these questions, the importance of them, the number and variety of the facts which may be supposed to bear on them, appeared to make this course not only convenient, but necessary; and the necessity has been enhanced by a circumstance peculiar to this controversy. The war which commenced in April 1861, and ended in May 1865, was a civil war; and it was hard, even for a Government which had again and again proclaimed itself neutral in similar contests occurring elsewhere, to reconcile itself to the assumption, in its own case, of the same attitude by other nations. Every occasion on which that neutrality had to be practically asserted, was painful, and perhaps naturally painful, to the United States. But neutrality, in a war wholly or partly maritime, is not, and cannot be, as regards maritime Powers, a merely negative condition. States, the most remote from the principal theatre of hostilities, may yet, through their shipping, or their Colonial possessions, be brought into contact with those hostilities in various parts of the world, and questions will thus arise which cannot be avoided or put aside by mere inaction. In the Case of Great Britain, the points of contact, and therefore the occasions of complaint, were greatly multiplied by the diffusion of her maritime interests, the magnitude of her commercial marine, the number of her Colonies, the activity of her manufacturing industries, and the almost unbounded liberty which her laws allow to trade. The feelings of annoyance which the impartial neutrality of Great Britain excited, in many ways, and under many circumstances, in the Government and people of the United States, were, it was hoped by Her Britannic Majesty's Government, almost, if not quite, forgotten; these were matters, at all events, which neither this Government, nor probably any other, would have thought it right to refer to any Arbitrators, however carefully selected. But the claims which are submitted to the Tribunal are of a different character. The United States believes them just; Great Britain believes them erroneous. Both nations agree in regarding them as proper to be referred to an independent and impartial decision. Hence, the importance of separating these claims from the various matters of complaint or causes of dissatisfaction with which they were long associated in the diplomatic correspondence of the American Government and in the minds of the American people; and of keeping plainly and steadily in view the questions with which the Tribunal has actually to deal, and the facts and arguments which are properly and directly relevant to those questions.

Adhering firmly to this distinction, Her Majesty's Government has, at the same time, not declined to meet and argue, within the limits prescribed by its own self-respect, and by its view of the proper scope of the reference to arbitration, the wider issues which the United States have thought proper to raise.

Endeavours were made on the part of the United States to show that, in various matters which are not referred to the Arbitrators, the British Government had permitted violations of its neutrality in favour of the Confederate States, whilst it had been rigorous in refusing to the United States the enjoyment of corresponding advantages. The Arbitrators were asked to draw from hence a conclusion, which it was desired they should apply to the questions actually submitted to them for adjudication.

These complaints related substantially to the traffic in arms and munitions of war, and other articles of commerce, carried on with Southern ports, from ports within the British dominions, and particularly from and through that of Nassau. The United States insisted also on the fact that the Confederate Government had agents in England for the purchase of what it required; and employed, as financial agents, a mercantile house in this country, to whom they remitted specie and cotton, and through whom their payments were made.

Recapitulation of the argument for Great Britain.

But, on the part of Great Britain, it has been clearly proved that all these complaints are groundless. It has been shown that the United States, equally with the Confederate States, resorted to England for necessary supplies of arms and munitions of war, and that they also had their agents here for making purchases, as well as for their financial transactions and for the disbursement of money. It has been shown that the traffic carried on with the two communities (which, for the time, they were), differed solely in incidental circumstances, which were the natural result of the overwhelming superiority at sea possessed by the United States, and which imposed no peculiar duties on the Government of Great Britain; that in all these matters no favour or accommodation was accorded to one which was denied to the other; and that the real substance of the complaints of the United States is, that Great Britain declined to assist by active interference the more powerful belligerent, and to thwart the endeavours of the weaker to obtain the necessary supplies, and that she from first to last persevered in holding an even hand between the two. In short, it is not that she departed from impartial neutrality in favour of the Confederacy, but that she refused to depart from it in the interest of the United States. If therefore, from this part of the conduct of Her Majesty's Government, a presumption is to be applied to any other part, the legitimate presumption is, not that the Government would be discovered to deviate from the line of an impartial neutrality, but that it would scrupulously and steadily adhere to that line.

Is, then, this presumption found to fail, when we approach the questions which are really before the Arbitrators, and which relate exclusively to the particular vessels enumerated in the Case of the United States? Her Majesty's Government maintains that it is not. In the Case which it has presented, and in this Counter-Case, the British Government has fully stated to the Arbitrators the measures adopted to prevent the equipment in its ports of belligerent ships of war, and the departure from its ports of vessels specially adapted for warlike use and intended for the naval service of either belligerent; explaining at the same time the peculiar difficulties which, in a country like Great Britain, must always attend the enforcement of such a prohibition, the powers with which the Government was armed by law, and the restraints which the law imposed on it,—restraints judged expedient in England for the due security of property and civil liberty and for the proper administration of justice. All the cases of alleged or suspected equipment or warlike adaptation which occurred during the war have been stated in order to the Arbitrators; and they have thus been enabled to take a connected view of the manner in which these cases were dealt with by the Government, and the general course which it followed in regard to them.

In connection with this part of the subject the question naturally arises, what measure of care or diligence can reasonably be expected in matters of this kind from a neutral Government—or, to speak more exactly, ought to be held due from such a Government as a matter of international obligation. The United States have attempted to furnish a definition of this, which to the British Government appears not only to fail as a definition, but to exact more than neutral Powers could safely or rightly concede, and much more than has ever been practised by the United States themselves. In illustration of this, and for no purpose of recrimination or reproach, it has been found necessary to refer to the past and recent history of the United States, not only as being the Power which now produces this very strict definition of due diligence, but as the country which has been the principal seat and source of enterprizes, such as those for which it now seeks to make Great Britain responsible. It has been necessary to exhibit the striking contrast between the course of the American Government in dealing with enterprises against friendly States within its territory renewed again and again, and always with impunity, during a long series of years, and the iron rigour of the rules it now seeks to enforce against Great Britain, the perfection of administrative organization it seeks to exact from her. The views of Her Majesty's Government as to what constitutes a reasonable measure of diligence or care have, in its Case and Counter-Case, been stated in general terms. But this Government has refrained from the attempt, in which the United States, as it conceives, have failed; and it has left the Arbitrators to judge of the facts presented to them by the light of reason and justice, aided by that knowledge of the general powers and duties of administrative government which they possess as persons long conversant with public affairs.

Proceeding to the several cruizers to which the claims of the United States relate, Her Majesty's Government has been compelled to observe, in the first place, that an award against Great Britain as to any one or more of them could not be supported by broad general allegations, but must be founded on some specific failure or failures of duty alleged and proved in respect of that ship or those ships; in the second place, that, in deciding whether a failure of duty was or was not committed, the Arbitrators have to consider, not what has since been discovered, or what the members of the Tribunal now know respecting

Recapitulation of the argument for Great Britain.

these ships, but the information which the British Government actually possessed, or, by the exercise of reasonable care, ought to have possessed, at the time. They have to place themselves in the situation in which this Government then was, in order to judge fairly whether it failed in the performance of its duties. As to each vessel, the original outfit of which is made matter of complaint, they have to be satisfied, first, that she was, in fact, armed, fitted out, or equipped for war within the British territory, or specially adapted within it to warlike use; secondly, that the Queen's Government had reasonable grounds to believe that she was intended to cruize or carry on war against the United States; thirdly, that, having such reasonable ground of belief, the Government did not use due diligence to prevent her equipment, or else to prevent her departure. It is not enough to prove one of these things, or two; it is necessary to prove all three of them, It has been further pointed out that, when we speak of a Government having reasonable grounds of belief (the matter in question being the prevention of an apprehended act by the enforcement of a law), we mean that it has more than a suspicion, founded on general rumour or mere probabilities; that it has reasons, which can be exposed in due time to the test of judicial inquiry, for such a belief as is sufficient to justify it in setting the machinery of the law in motion.

In the case of the Alabama it has never been denied by Great Britain that she was a vessel specially adapted by her construction for warlike use, nor that she was thus constructed in a British port. Nor is it denied that, at the time of her departure from England, the Government had obtained reasonable ground to believe that she was intended for the naval service of the Confederate States. But it has been shown that this necessary information was not put into the possession of the Government or its officers by the Minister or Consul of the United States until a very short time before the departure of the ship, either through a want of due diligence on their part, or (which is more probable) because they had not, up to that time, been able to procure it themselves. It has been shown, also, that no time was lost by the Government in consulting its legal advisers as to the sufficiency and credibility of this evidence, which was a question of reasonable doubt; and that the order for detention which, in the event, came too late, was deferred only till their opinion should be obtained. It has been shown further that the information possessed by the Government related solely to the vessel herself, which was known to be unarmed, though adapted by her construction for war. Of the intended dispatch of arms for her nothing was known to the Government; nothing was known—certainly nothing was communicated—by the officials of the United States. Her Majesty's Government submits to the Arbitrators that, on the facts stated and proved, no failure of duty has been established against Great Britain in respect of which compensation ought to be awarded to the United States.

In the case of the Florida it has been shown that the British Government had not, at or before the time of her departure from England, any reasonable ground to believe that she was intended to cruize or carry on war against the United States, and that no information on which a reasonable belief could be founded, had, up to that time, been produced by Mr. Dudley or Mr. Adams. It has been further shown, that she was seized at the Bahamas by the authority of the Colonial Government; and, after a fair, open, and regular trial in a Court of competent jurisdiction, was released by judicial decree. And it has been likewise shown that the cruize, in which all her prizes were made, was commenced from the Confederate port of Mobile, in which port she was manned and fitted out for that cruize. Her Majesty's Government submits therefore that, in respect of this ship, no failure of duty has been established against Great Britain, on account of which compensation ought to be awarded to the United States.

In the cases of the Georgia and Shenandoah, it has been shown that neither vessel was armed, fitted out, or equipped for war, or specially adapted, either wholly or in part, for warlike use within British territory; and, further, that Her Majesty's Government had not, at the time when they respectively left England, any reasonable ground to believe that they, or either of them, were or was intended to cruize or carry on war against the United States. Efforts have, it is true, been made to show that the Shenandoah was enabled to ship a considerable addition to her crew at Melbourne, by the connivance or culpable negligence of the Colonial authorities; but this charge, which has nothing to do with the original outfit of the ship, and is one which from its nature would require to be supported by the clearest evidence, is not so substantiated, and is, on the contrary, disproved by the facts. No failure of duty has been established against Her Majesty's Government in respect of either of these vessels.

In the case of the Tallahassee and Chickamauga, it has been seen that no failure of duty has been even alleged, much less proved, against Great Britain. These vessels were built, indeed, in England, but they were built and used as ships of commerce; it was by

an afterthought that they were armed for war; and their employment as ships of war lasted but a few weeks in the one case, and but a few days in the other. They were armed in, and dispatched from, a Confederate port, and to the same Confederate port they returned.

The Sumter and Nashville were not even built in the Queen's dominions; and, in respect of their original outfit, nothing is, or can be, alleged against Her Majesty's Government. Setting aside some other minor complaints, which will not bear a moment's examination, it is suggested only that they received in British ports such hospitalities as were extended to Confederate vessels in general in the ports of neutral nations.

In the case of the Retribution, the facts alleged show nothing more than that her commander contrived on one occasion, by fraudulently personating the master of a prize captured by him, and concealing the fact that she was a prize, to dispose of the cargo in a small island of the Bahama Archipelago, remote from the seat of Government; and that, on another occasion, by means of a fraudulent conspiracy with a party of "wreckers," he managed to carry a prize into the same place and to extort, through the wreckers, from her master and owners, a ransom, under pretence of salvage. These facts, if proved, establish no failure of duty against Great Britain.

Her Majesty's Government deems itself entitled to observe that the later cases in this list throw a strong light upon the earlier ones. They show very clearly what are the views of international obligation and international justice on which the claims of the United States are founded. If Great Britain is liable for the captures of the Tallahassee and Chickamauga, what necessity is there for endeavouring to show that, in those of the Florida and Alabama, the British Government had reasonable ground to believe, or even to suspect, the existence of an unlawful intention? If she is liable in those of the Sumter and Nashville, it is superfluous to prove even equipment or construction in British territory. If she is liable for the Retribution, what need, it may be asked, of any definite charge, of any proof or evidence at all?

It must not be forgotten that, besides the various cruizers in respect of which claims are now made by the United States' Government against Great Britain, there were at least ten others which were fitted out and sent to sea from Confederate ports in the course of the war (the Calhoun, Jefferson Davis, Savannah, Echo, St. Nicholas, Winslow, York, McRae, Judah, and Petrel): and that by at least eight of these depredations were committed upon the merchant shipping of the United States.* There were also the Boston and the Sallie, which are included (without any apparent reason) in the Summary of Claims contained in Vol. VII of the Appendix to the Case of the United States, but of which, in the Case itself, no mention is made.

It will not have escaped the notice of the Arbitrators that the cases of the Florida and Alabama occurred at a very early period of the war; that of the Florida occurred in the first year of it, that of the Alabama very soon afterwards, and before the true character of the Florida, or the purpose for which she was destined, was or could be known in England. In dealing with a charge of negligence brought by one nation against another, this is a material fact. A Government, which finds itself compelled by the outbreak of civil war in another country to assume the character of a neutral, must learn, by practical experience, the necessity for various measures of precaution which were never called for before. The United States therefore find it necessary to allege more than this, and to charge the British Government with a want of promptitude and activity continued after circumstances had proved this need of unusual precautions. And, in connection with this charge, and as a proof of it, they have dwelt on the fact that no alteration was made, during the war, in the laws of Great Britain, although the Government of the United States is alleged to have asked that these laws might be made more effective.

Her Majesty's Government has to observe upon this point that the United States have failed, or forborne, to point out wherein the law of Great Britain required alteration,—and this for a very plain reason.

The law of Great Britain on this subject was stricter and more comprehensive in some of its prohibitions, and more severe in some of its penalties, than the corresponding law of the United States; and, except in those points in which the British law was of superior efficiency, both were substantially the same. The first suggestion of any alteration of the law proceeded, not from Mr. Adams (who, in the case of the Alabama, had stated, on the 9th October, 1862, that he based his representations "upon evidence which applied directly

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* See the general list of Claims filed in the Department of State of the United States: Appendix to Case of the United States, vol. iv, p. 446, *et seq.*

to infringements of the municipal law itself, and not to anything beyond it"),* but from Earl Russell, who, on the 19th December, 1862, wrote thus to Mr. Adams:—

"I have the honour to inform you that Her Majesty's Government, after consultation with the Law Officers of the Crown, are of opinion that certain amendments might be introduced into the Foreign Enlistment Act, which, if sanctioned by Parliament, would have the effect of giving greater power to the Executive to prevent the construction, in British ports, of ships destined for the use of belligerents. But Her Majesty's Government consider that, before submitting any proposals of that sort to Parliament, it would be desirable that they should previously communicate with the Government of the United States, and ascertain whether that Government is willing to make similar alterations in its own Foreign Enlistment Act, and that the Amendments, like the original Statute, should, as it were, proceed *pari passu* in both countries. I shall accordingly be ready to confer at any time with you, and to listen to any suggestions which you may have to make, by which the British Foreign Enlistment Act and the corresponding Statute of the United States may be made more efficient for their purpose."†

This communication was courteously received by the Government of the United States, which professed themselves to be willing to consider any propositions which the British Government might desire to make; but they offered no suggestion on their own part. On the contrary, Mr. Adams distinctly stated to Earl Russell, on the 14th February, 1863, that "they did not see how their own law on this subject could be improved"; (or, as Mr. Adams reported the same conversation to his own Government, that "the law of the United States was considered as of very sufficient vigour").‡ Earl Russell then rejoined, that the Administration of which he was a member had, on more mature consideration, come to a similar conclusion; and "that no further proceedings need be taken at present on the subject."

On a later date (27th March, 1863) Lord Russell told Lord Lyons that the subject had again been mentioned:—

"With respect to the law itself, Mr. Adams said, either it was sufficient for the purpose of neutrality, and then let the British Government enforce it; or it was insufficient, and then let the British Government apply to Parliament to amend it. I said that the Cabinet were of opinion that the law was sufficient; but that legal evidence could not always be procured."§

On another occasion, Lord Russell gave Mr. Adams an answer substantially the same as Mr. J. Q. Adams, as Secretary of State, had returned to a similar suggestion made by the Minister of Portugal:—"The Alabama has avoided seizure through the inadequacy of the evidence, not through a defect in the law."

The correspondence between the two Governments prior to the termination of the war does not justify the statement made at page 113 of the Case of the United States, that the United States repeatedly, and in vain, invited Her Majesty Government to amend the British Foreign Enlistment Act." The only foundation for that statement appears to be, that Mr. Adams, in a letter to Earl Russell of the 20th May, 1865, spoke of "the inefficiency of the law," on which the British Government relied; and of "their absolute refusal, when solicited, to procure additional powers to attain the object."‖ Nor was it until the 18th September, 1865 (when the war was over), that Mr. Adams suggested to Earl Russell that there were certain of the "main provisions" of the law of the United States on this subject, viz., "those very same sections which were originally enacted in 1817, as a temporary law, on the complaint of the Portuguese Minister, and made permanent in that of 1818." which were not found in the law of Great Britain; adding, "It is in these very sections that our experience has shown us to reside the best preventive force in the whole law."¶ To this suggestion a very conclusive reply was made by Earl Russell on the 3rd November, 1865 (the accuracy of which has since been admitted even by American writers most strenuous in their advocacy of the claims against Great Britain), viz., that the sections of the American Acts of 1817 and 1818 referred to by Mr. Adams (which are commonly known as the "bonding clauses") "proved utterly inefficacious to prevent the fitting out of privateers at Baltimore," and were also so strictly limited to "armed" vessels, or vessels carrying a cargo "consisting principally of arms and munitions of war," as to be wholly inapplicable (even if they had been in force in Great Britain) to the Alabama, Florida, Georgia, Shenandoah, and vessels of that class.**

Under these circumstances, no alteration was attempted to be made in the law of Great Britain on this subject during the war, when it might have been attended with serious difficulties, and might have been objected to as inconsistent with neutrality. Her

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* Appendix to Case of United States, vol. iii, p. 51.
† Ibid., p. 92.
‡ Ibid., vol. i, p. 668.
§ Ibid., p. 670.
‖ Ibid., vol. iii, p. 533.
¶ Ibid., p. 572.
** Ibid., p. 587.

Majesty's Government believed that the existing law would be found sufficient in all cases in which evidence of its infringement might be forthcoming, to stop those enterprises, of which the United States had a right to complain; and the result was not such as to disappoint its expectations.

After the close of the war, Lord Clarendon, in a despatch to Sir F. Bruce, December 26, 1865, made a new overture to Mr. Adams for the adoption, concurrently by both nations, of measures calculated to bring about such improvements in the Code of International Law as experience might have shown to be necessary. "Mr. Adams," he reports, "in reply, said, that the law of England, in its international application, stood greatly in need of amendment, but he gave me no encouragement to expect, that his Government would co-operate with that of Her Majesty in the course of proceeding which I had suggested."*

Afterwards, in 1867, a Royal Commission was appointed by the British Government to consider whether it was expedient to make any and what amendments in the Neutrality Laws of Great Britain; and the result of their labours was an Act of Parliament, passed in 1870, by which the British Government has been armed with much more stringent powers of control than it before possessed, over all trading or other operations of its citizens engaged in shipbuilding, which might have a tendency to compromise its neutrality or to disturb its friendly relations with belligerent Powers. No similar powers are vested in the Government of the United States by the Act of Congress of 1818. Yet, as to this British Statute, the United States have suggested (at page 118 of their Case) that its provisions "were intended, at least as against the British Government, as a re-enactment of the law of nations, as understood by the United States to be applicable to the cases of the Alabama and other ships of war constructed in England for the use of the insurgents."

It might have been expected, if this were the view taken by the United States of the recent British legislation of 1870, that something would have been done, or at least attempted by the Legislature of the United States, to bring their own neutrality laws to an equal degree of efficiency. So far from this, it will be found that their Law of 1817-18 was designedly, and not through any mere inadvertence, restricted within its present limits; and that the only proposal for a change in that law which has yet been made to Congress, since the termination of the civil war, was in a precisely opposite direction.

A comparison of the provisions of the existing Neutrality Law of the United States with the British law which was in force during the whole of the late contest (derived entirely from an American source, beyond suspicion of partiality), will be found, with some other particulars, bearing on this immediate subject, in Annex (B) to the present Counter-Case.

But it must be observed further, that a State is under no obligation to make changes in its laws at the instance of another State. All that it has to do, is to take care that its international obligations are fulfilled. Were not the international obligations of Great Britain fulfilled from 1862 to 1865? The Arbitrators have had ample proof that they were so. Ship after ship was seized and detained—at what cost in some cases, and under what circumstances of difficulty, they have already seen. No armed vessel at any time sailed from a British port for the service of the Confederates. From July 1862 to the end of the war, not a single vessel equipped or specially adapted by construction or otherwise for war, was able to leave any British port for the Confederate service; and not a single vessel, of which the Government had any information, sailed, even without warlike equipment or adaptation, with the intention that she should be employed in that service. In the documents produced by the United States there are repeated statements to the effect that many formidable vessels had been contracted for by the agents of the Confederate States in England. What became of these contracts? They appear to have been abandoned, and the Confederate Government had recourse to France, whence, though foiled in some other instances, they obtained the ironclad, Stonewall.†

This charge therefore vanishes, and the decision of the British Government not to

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* Appendix to Case of the United States, vol. iii, p. 627.

† The Arbitrators are referred to Sinclair's letter (24th September, 1863), quoted in the Case of Great Britain, p. 45:—

"When I made a contract with you in November last for the building of a steam-ship, I was under the impression, having taken legal advice, that there was nothing in the law of England that would prevent a British subject from building such a vessel for any foreign subject as a commercial transaction. Although the recent decision in the Court of Exchequer in the case of the Alexandra would seem to sustain the opinion, yet the evident determination of your Government to yield to the pressure of the United States' Minister, and prevent the sailing of any vessel that may be suspected of being the property of a citizen of the Confederate States, is made so manifest that I have concluded it will be better for me to endeavour to close the contract referred to, and go where I can have more liberal action."

propose any alteration of its laws to Parliament whilst a war was in progress, but to reserve the whole question for later and more deliberate consideration, can certainly afford no cause of complaint to the United States.

There is, however, another class of charges, quite distinct from those reviewed above, by accumulating which it is apparently sought, in the Case of the United States, to make good the deficiencies of the latter. These relate to the hospitalities afforded in ports of the British Empire to Confederate cruizers, and to the undue favour or partiality which is alleged to have been shown to them by the local authorities. The Arbitrators know what is the general character of these complaints. That a vessel of war may have contrived to ship a few more tons of coal, or a few more casks of beef or biscuit, or to stay in port a day or two longer, than strict necessity required—that precautions which ought to be needless in dealing with naval officers (who are men of honour), may sometimes have been omitted or not suspiciously enforced—that any civility, of the most trivial and ordinary kind, was extended to the commander of a Confederate vessel—these are the grievances on which the United States ask a Tribunal of Arbitration to pass judgment, and on which they rely as assisting their claim for compensation against Great Britain.

It is evident that, if all these complaints could be proved, they would not support a demand for compensation: nor are they really within the scope of the reference to Arbitration.

The restrictions which were imposed by the Queen's Regulations on belligerent vessels, entering ports within her dominions, were not required by international law. They were made, and they might have been revoked, in the exercise of those discretionary powers which are vested in all Sovereign Governments. All that Great Britain owed the United States on this score was, that they should be enforced, fairly and impartially, on both belligerents alike. In the section of this Counter-Case which has been devoted to that subject, all these complaints have been reviewed and answered, in a manner which Her Majesty's Government would fain hope will prove convincing, not only to the Arbitrators, but to the United States. It would, indeed, be no matter of surprise, and would afford no great occasion for censure, if it should be found that, among the widely scattered colonial possessions of the British Empire, some errors of judgment had been committed, and that difficulties new to the local authorities, and often very embarrassing, had not always been satisfactorily met. But it must surely be plain to every one who reads this recital, that the Governors of the various British colonies executed the regulations to the best of their judgment and ability, and with thorough impartiality as between the two belligerents. It is difficult, indeed, to avoid the conclusion that these complaints spring from imperfect information. When, for example, it is asserted that the cruizers of the United States were virtually excluded from the chief port of the Bahama Islands, in favour of Confederate cruizers, and we discover that these islands were thirty-four times visited by the former, whilst Nassau was but twice visited by the latter—or, when the quantity of coal obtained by Confederate ships is made a matter of complaint, and we find that a single United States' vessel, within six weeks, contrived to procure from three British ports more than two-thirds of the amount ascertained to have been purchased within Her Majesty's dominions by all the Confederate ships together during the whole course of the war, can we doubt that the Government of the United States is labouring under serious misapprehensions?

The British colonies were, it is true, often resorted to by belligerent vessels of war; but their most frequent visitors were cruizers of the United States: and, if infractions of Her Majesty's regulations were sometimes committed, these cruizers were the most frequent offenders.

Compensation claimed by the United States. General Principle.

The British Government then, on this summary review of the facts and arguments adduced by the United States, submits to the Arbitrators that no failure of duty has been established against Great Britain in respect of any of the vessels enumerated in the Case. But, since the Arbitrators are to judge, and, as it is necessary for every party to an Arbitration to contemplate the possibility that on some points the award may not be in his favour, something ought here to be said on the claims for compensation urged by the United States, and on the proper mode of dealing with such claims.

Her Majesty's Government readily admits the general principle that, where an injury has been done by one nation to another, a claim for some appropriate redress arises, and that it is on all accounts desirable that this right should be satisfied by amicable reparation, instead of being enforced by war. All civil society reposes on this principle, or on a principle analogous to this; the society of nations, as well as that which unites the individual

Compensation claimed by the United States. General principle.

members of each particular commonwealth. But the general principle carries us but a little way. Before it can be applied in practice various considerations interpose themselves, which are as necessary to guard against injustice in one direction, as the principle itself is to prevent or remedy it in another. It is not necessary to enumerate all these considerations. Here it is enough to say, that the reparation claimed should never exceed the amount of the loss which can be clearly shown to have been actually caused by the alleged injury; and that it should bear some reasonable proportion, not only to the loss consequent on the act or omission, but to the gravity of the act or omission itself. A slight default may have in some way contributed to a very great injury; but it is by no means true that, in such a case, the greatness of the loss is to be regarded as furnishing the just measure of reparation, without regard to the venial character of the default. It is needless to show this by examples. Many illustrations of it will suggest themselves to the minds of the Arbitrators.

There may be cases, doubtless, in which considerations of this kind do not demand to be taken into account. But it is manifest that they apply very forcibly to defaults such as are charged, and claims such as are made, by the United States against Great Britain. The substance of the charge in this class of cases is, that a belligerent has been enabled to make use of some spot within the neutral territory for purposes of war, through a relaxation of the care which the neutral Government ought to have exerted to prevent it. It is not true, that the default of the neutral is the cause of the losses sustained. It is certainly not the *causa causans:* it need not even be the *causa sine quâ non.* The most that can be alleged is, that, if greater diligence had been used, those losses might perhaps have been prevented, and, at all events, would not have happened by the same means and in the same way. The losses complained of are losses inflicted by the ordinary and legitimate operations of war, which are alleged to have been facilitated by the neglect of the neutral. But the active and direct agent in the infliction of loss is the belligerent, and he inflicts it in ways which, as between him and his enemy, are lawful; the only share in it which can be ascribed to the neutral is indirect and passive, and consists in an unintentional omission. Further, if we attempt to pursue this share of liability, springing from neglect alone, through the operations, naval or military, to which the neglect is alleged to have contributed,—through successive battles, through a cruize or a campaign,—we see that it escapes from any precise estimate, and soon loses itself among the multitude of causes, positive or negative, direct or indirect, distinct or obscure, which combine to give success to one belligerent or the other, and to which the proverbial uncertainty of war is due. This is clearly seen when the principle is applied to the case of a ship which has been armed or adapted for war, or has had her warlike force augmented, in neutral territory. We speak, for the sake of brevity, of the "acts" of a ship, of prizes made or losses inflicted by her, as if the power and the responsibility of doing hurt adhered to the vessel herself. But the acts of a ship are the acts of the persons who have possession and control of her; the ship herself—which is only a vehicle of wood or iron, serving, if armed, the purpose of a floating fortress—is but the instrument, or rather one of the instruments, with which those acts are done.

The same thing is seen more clearly still when we come to apply the principle to cases where the equipment or adaptation is manifestly but partial. A danger here arises of being misled by a false analogy. Any equipment, however partial, in a neutral port, such as the shipping of a gun, the cutting of a port-hole, the addition of a magazine or shell-room to the internal fittings of a ship, might justify the neutral Power in restoring all prizes made by her during the cruize to which the partial equipment was applied, and afterwards brought within the neutral territory. The ground on which the restitution is decreed here is, that there has been a violation of the neutrality of the territory; and it matters not whether that violation were great or small. But if, in such a case, it be possible to show that the partial equipment had been made through neglect on the part of the authorities of the port, and if reparation for the neglect be demanded, how are we to assess the liability of the neutral? To assign the whole damage which the ship may do during her cruize to the neglect of the neutral, would be extravagantly unjust: to allot with precision any specific proportion of it to the same cause, would almost certainly be impracticable.

Further, when the neutral country from which a ship of war, or an equipment, or an augmentation of force has been obtained, is only one of several countries to which the belligerent has access for similar purposes, it is impossible to assume, that the consequence of the prevention of a particular adventure of this kind would have been to deprive that belligerent of the means of accomplishing his purpose: its only effect might have been, to change the immediate direction of his endeavours. Thus, in the case of the rams at Birkenhead, the responsibility arising out of the contract between the builders and Bullock, was sought to be got rid of, by a transfer of the benefit of that contract to a

Compensation claimed by the United States. General principle.

Frenchman, named Bravay, who pretended that his object was to dispose of them to other Powers, and not to the Confederate States; and when the Confederate agents found it impracticable to obtain those vessels from a British port, they succeeded in procuring, and carrying to sea, another similar ram, the Stonewall, from a port in France.

When any vessels, whether procured from Great Britain, or otherwise obtained, had become Confederate ships of war, the duty of repelling their hostile proceedings by all proper and efficient means (like the rest of the operations necessary for the conduct of the war), devolved exclusively upon the United States, and not upon the British Government. Over the measures taken by the United States for that purpose, Great Britain could exercise no influence or control; nor can she be held responsible, in any degree, for their delay, their neglect, or their insufficiency. Any want of skill or success, even in the operations by land, would have the effect of prolonging the period during which cruizes of this nature could be continued. All losses, which might have been prevented by the use of more skilful or more energetic means, ought justly to be ascribed to a want of due diligence on the part of the Government of the United States, and not to any error, at an earlier stage, of the British Government. *Causa proxima, non remota spectatur.*

In short, there are difficulties of no inconsiderable force in holding that defaults of this class draw with them any definite liability to make pecuniary reparation. It is difficult—very often it is practically impossible—to ascertain, with any approach to accuracy, what measure of loss ought with justice to be ascribed to the default complained of, or even, perhaps, whether it was a substantial cause of any loss at all.

For this reason, probably, as well as from the reluctance usually felt to bring accusations of negligence against a friendly Government, claims such as the United States now urge against Great Britain have rarely been made; and have never, so far as Her Majesty's Government is aware, been conceded or recognized. Where prizes made by vessels armed for war, or which have augmented their warlike force, within neutral territory, have afterwards been brought within the jurisdiction of the neutral, it is the acknowledged right, and it may be the duty, of the neutral Power, to cause them to be restored on application. Beyond this point, no recognized neutral authority or established precedent has hitherto extended the liability of the neutral.

If the conduct of the United States under similar (or, rather, under much stronger) circumstances, were made the measure of their right to indemnification in the present inquiry; if the rule of compensation were sought in the precedent (to which they have themselves, in their own Case, appealed), of the Treaty of 1794, between the United States and Great Britain, and in the decisions of the Commissioners under the VIIth Article of that Treaty, no pecuniary compensation whatever could be found due from Great Britain for any captures made at sea, and not brought into British ports; although the vessels which made those captures may have been illegally fitted out in, and dispatched from, British ports, through some want of due diligence on the part of British authorities.

If the relative positions of the Government of the Confederate States and its officers, to whose acts the losses in question are directly attributable, and of the British Government (whose neutrality they violated), towards the United States who now make these claims, are justly estimated, the more difficult it will be to see how (upon the supposition of a want of due diligence on the part of Great Britain in guarding her own neutrality), any pecuniary compensation whatever can be claimed from Great Britain. The whole responsibility of the acts which caused these losses, belonged, primarily, to the Confederate States; they were all done by them, beyond the jurisdiction and control of Great Britain; wrong was done by them to Great Britain, in the very infraction of her laws, which constitutes the foundation of the present claims. But from them, no pecuniary reparation whatever for these losses has been, or is now, exacted by the conquerors: what has been condoned to the principals, is sought to be exacted from those, who were, at the most, passively accessory to those losses, through a wrong done to them, and against their will. The very States which did the wrong are part of the United States, who now seek to throw the pecuniary liability for that wrong solely and exclusively upon Great Britain, herself (as far, at least, as they are concerned) the injured party. They have been re-admitted to their former full participation in the rights and privileges of the Federal Constitution; they send their members to the Senate and the House of Representatives; they take part in the election of the President; they would share in any benefit which the public revenue of the United States might derive from whatever might be awarded by the Arbitrators to be paid by Great Britain. On what principle of international equity can a Federal Commonwealth, so composed, seek to throw upon a neutral, assumed at the most to have been guilty of some degree of negligence, liabilities which belonged in the first degree to its own citizens, with whom it has now re-entered into relations of political unity, and from which it has wholly absolved those citizens?

Compensation claimed by the United States. General principle.

The British Government, however, whilst deeming it right to present these considerations to the notice of the Arbitrators, will not omit to deal with the ulterior questions which must arise, in the event of the Arbitrators being of opinion that claims of this nature are not absolutely inadmissible, should the United States succeed in establishing any failure of duty sufficient to support them in the judgment of the Tribunal. Nor does it affirm that, in that case, no award of compensation ought to be made, unless the amount of loss properly assignable to the default can be estimated with exact precision. But it firmly maintains that the duty entrusted to the Tribunal would not be satisfied by finding, as to any particular ship, that Great Britain had failed to discharge some international duty, and then proceeding at once to charge her with all the losses directly occasioned to the United States by the operations of that ship. This, indeed, would be so manifest an injustice that it is needless to argue against it. Should the Arbitrators be satisfied that, as to any ship, and in any particular, there has been a clearly ascertained default on the part of Great Britain, it would then become their duty to examine wherein the default consisted, and whether it was a just ground for pecuniary reparation; and, if so, to determine the general limits of the liability incurred, having regard both to the nature and gravity of the default itself, and the proportion of loss justly and reasonably assignable to it. The liability thus determined, or the aggregate of such liabilities, as the case may be, constitutes, it is evident, the only just measure of the compensation, if any, to be awarded to the United States. The basis of the award must be the fact, established to the satisfaction of the Arbitrators, that certain losses have been sustained on the one side, which are justly attributable to certain specific failures of duty on the other, in respect of a certain ship or ships; and the basis of the award must also be the basis for computing the sum to be awarded. The power of awarding a gross sum does not, it need hardly be observed, authorize the Arbitrators to depart, in substance, from this basis, although it may relieve them from the necessity of a minute inquiry into the particulars of alleged losses, and from intricate and perhaps inconclusive calculations.

The Arbitrators will have observed the manner in which these claims are dealt with in the Case of the United States. Specific failures of duty on the part of Great Britain are alleged in respect of each of the vessels enumerated. Great Britain is then charged indiscriminately with all the losses occasioned by the acts of all the vessels, and, in addition, with expenses said to have been incurred by the Government of the United States in vainly endeavouring to capture them. Thus, the Florida and Alabama were obtained as unarmed vessels from England; one was armed in Portuguese waters, the other was manned and made capable of cruizing in a Confederate port. Great Britain is called upon to pay for all the losses which can be attributed to the Florida and Alabama—nay more, for all losses occasioned by other vessels, which were captured and armed at sea by the commanders of those cruizers. The Tallahassee was built as a trading vessel in England, and was afterwards converted into a ship of war in the Confederate States;—this country is to pay for all the captures of the Tallahassee. The Sumter received ordinary hospitalities in a British port; and Great Britain is to be charged with captures made by the Sumter. Interest on the amount of these losses and expenses is also asked for, to be computed at seven per cent. per annum from the 1st July, 1863, a date long antecedent to the dates at which a large proportion of the alleged losses and expenses are stated to have been incurred.

In calculating the losses themselves, which is a separate branch of the question, the American Government appears to have presented, without discrimination, all claims which any persons alleging themselves to have been interested in captured ships or cargoes have thought proper to make. Claims are also presented for public property of the United States, captured or destroyed by some of the Confederate cruizers, and further for expenditure stated to have been incurred in the "pursuit" of these cruizers.

The claims presented under these three heads have been referred for examination to Departments of Her Majesty's Government conversant with the classes of matters to which the claims relate; and the results of this examination are embodied in two Reports, to which Her Majesty's Government requests the attention of the Arbitrators.* The object of the examination has been to discover how far, on the data furnished by the United States themselves, the estimate of losses alleged to have been sustained, and of expenditure alleged to have been incurred, could be regarded as reasonable estimates, *primâ facie*, of losses actually sustained, and of an expenditure which could on any hypothesis be held chargeable upon Great Britain. Whether, on the facts proved before the Arbitrators, Great Britain ought to be charged with any, and what part of the losses sustained, is of course a

* These Reports will be found in vol. vii of the Appendix to the Case of Great Britain.

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distinct question; and it is again a distinct question whether upon any sound principle she ought to be charged with any, and what part of the alleged expenditure.

Compensation claimed by the United States. General principle.

Claims for Private Losses.

Claims for private losses.

A reference to the first of these Reports (that from the Committee appointed by the Board of Trade) will convince the Arbitrators that no reliance can be placed on the estimate presented of alleged private losses; and that, were the Tribunal to hold Great Britain liable in respect of any one or more of the enumerated cruizers, and to decide on awarding a gross sum for compensation, these estimates could not safely be accepted as furnishing even a *primâ facie* basis for the computation of such a gross sum.

These claims include—

1. Claims for the value of ships freighted with cargo, destroyed by Confederate cruizers; for the consequent loss of freight; and for the value of the cargoes;

2. Claims for vessels in ballast;

3. Claims by owners of whaling and fishing vessels destroyed, for the value of the vessels themselves, for the oil and fish which were on board of them, and also for the gross earnings which it is supposed they might have realized if their voyages had not been interrupted by capture—in other words, for prospective and speculative earnings;

4. Claims by American Insurance Companies in respect of insurances on ships, cargoes, freights, and profits, which are alleged to have been lost or destroyed by the capture of the vessels;

5. Claims for masters' wages, for personal effects taken or destroyed, and personal damages.

On the claims presented under the first head, the following observations, amongst others, are made in the Report:—

"It will at once be admitted by those who are at all familiar with the practice of the courts in maritime cases, that it is impossible to place much reliance on the opinion or evidence of shipowners or merchants as to the value of property which they are seeking to recover. Shipowners are in the habit of founding their estimate, not on what would be the market price of the vessel at the time of her loss, but on the original cost price, and often take into account the amounts which they have expended at different times without making any proper deduction for the wear and tear and damage which has been sustained. Merchants are inclined to estimate the value of their goods by the profits which they had hoped to realise, without making any allowance for the risk of the market price falling, or other contingencies on which those profits so often depend.

"A striking illustration of the truth of these remarks may be found in the case of the British vessels which were sunk in the River Seine in the course of the military operations conducted by the German armies in the recent war with France. The owners presented a claim for £20,270; but when this claim, which was entrusted for investigation by the German Government to Her Majesty's Government, was sifted and examined by the Board of Trade, it was found, in accordance with the very able report of the learned Registrar of the Court of Admiralty, that the owners were not entitled to any larger amount than £6,899.

"There is, to say the least, no reason to suppose that the statements made by the claimants in the present case as to the values of the vessels, their freights, earnings, and cargoes, are more trustworthy than such statements are generally found to be when properly tested and examined. We find, for instance, as we have already stated, shipowners putting forward claims for full freights and earnings without making any deductions whatsoever, so that they are, in effect, demanding profits at a rate exceeding 200 per cent., and sometimes exceeding 2,000 per cent. per annum. We find in that class of claims which we noticed in the first place, and which are the most important as regards amount, the owners of whaling vessels demanding the whole value of their ships and outfits, although they have received more than $700,000 from Insurance Companies, who at the same time, and in addition, put forward a claim for the same amount. We find the charterer claiming for the loss of the charter party or his profit thereon, whilst the shipowner demands the freight in full; and finally, we find merchants claiming profits on their goods at the rate of 30 and 40 and even 50 per cent. per annum, without making any allowance for freight and for charges payable at the port of destination. Under these circumstances, we think it right to express, most emphatically, our dissent from the assertion made in page 471 in the VIth part of the American Case, 'that the Statement shows all the facts necessary to enable the Tribunal to reach a conclusion as to the amount of injury committed by the cruizers.' On the contrary, that this assertion was not in any degree warranted, will appear from the two following radical defects in the Statement:—In the first place, as regards the ships, neither their age nor their class is given, and in some cases not even their tonnage; as regards the cargoes, in no instances do the claims specify the quantity either in measurement or weight, and in the cases of ships loaded with general cargo, the quality or description of the goods is not even mentioned or indicated. In the second place, the Statement is framed, to say the least, in so imperfect a manner that, in the majority of cases, it is impossible to ascertain even what is the value given by the claimants themselves to their own property."*

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* Appendix to British Case, vol. vii, p. 11.

Under the second head, very large sums are claimed as gross freights, for vessels which had no cargo on board, which might never have been loaded with cargo, and which could not have earned these freights without very heavy expenditure and considerable wear and tear, consumption of stores, and depreciation of ship and outfit; freights also which would not have been received, if at all, until after the lapse, in each case, of a very long period subsequent to the date of the capture.

On claims under the third head it is observed—

"The whaling and fishing voyages for which these vessels, vessels generally of small tonnage, are equipped, provisioned, and outfitted, extend over long periods, rarely of less than three or four years, so that the outfit and stores with which they are originally provided are of proportionately great value; in fact, in the great majority of cases, of much greater value than the vessels themselves. In the course of these voyages the vessels put into port from time to time, and disbursements are made by the masters, who draw for this purpose upon their owners, and the master and crew in lieu of wages generally receive a share of the vessel's earnings. At the end of the voyages the vessels are necessarily very considerably deteriorated by wear and tear, their stores are almost entirely consumed, and the greater part of their apparel and outfit rendered completely unserviceable and worthless. This being the general character of these whaling and fishing adventures, it is difficult to conceive a case in which damages can be of more speculative or contingent a character than those which are claimed for the loss of the gross earnings which the owners might be expected to have realized at the termination of these long voyages, which were prematurely put an end to by the capture of the vessels. In the first place the realization of the earnings and the estimate of their amount in this most hazardous and speculative of trades must necessarily be in the highest degree uncertain and problematical. In the second place, even if it were practicable to estimate the probable amount of these prospective earnings, a claim for that amount would be entirely illusory, unless enormous deductions were made, which again are difficult to estimate in any one particular case with any reasonable degree of certainty, such as deductions for the very considerable wear and tear of the vessels, the very great consumption of stores, and the destruction of by far the greater part of the outfit, which must necessarily have taken place before the full earnings could have been realized. It is therefore manifest that in the damages for which compensation is demanded in the claims now under consideration there exist all those elements of uncertainty, remoteness, and difficulty which would undoubtedly lead the courts both in America and in England to reject the claim altogether, in accordance with the principles laid down in the judgments which have been already cited or referred to.*

"The mode, moreover, in which this claim for prospective earnings has been preferred, leaves one without the slightest data for estimating in any one individual case the compensation which could with any propriety be claimed for these contingent profits. The total claim in respect of the whaling and fishing vessels amounts to about $8,500,000, about half of which is demanded for the loss of prospective earnings, without any deduction whatever. The claim is therefore from the very nature of the case, for reasons already stated, perfectly illusory, and we are scarcely surprised to find that this enormous claim for prospective earnings, which is really double the value ascribed by the claimants themselves to the ships and outfits, can be proved, as will be shown hereafter, to be equivalent to claiming, over and above the whole capital invested in those speculative adventures, a profit on such capital at a rate exceeding 300 per cent. per annum."†

On the fourth head it is observed:—

"The American Insurance Companies, who have paid the owners as for a total loss, are in our opinion, entitled to be subrogated to the rights of the latter, according to the well-known principle that an underwriter, who has paid as for a total loss, acquires the rights of the assured in respect of the subject matter of insurance. This principle was explained and acted on in the well-known English cases of Randall v. Cochran, 1 Ves. Sen. 98, and the Quebec Fire Insurance Company v. St. Louis, 7 Moore, P.C. 286, and is well recognized by the Courts of America. On the other hand, it is equally clear that the underwriters cannot be entitled to anything more than the assured themselves, for the claim of the former is founded on nothing else than their title to be subrogated to the rights which the latter possessed, and which, therefore, cannot possibly be more extensive than the claim which the latter would be entitled to maintain. From these considerations two consequences follow: In the first place, where the claimant is the Insurance Company and not the owner, compensation cannot be due for any sum exceeding the amount of the actual loss sustained by the owner, however much that sum may fall short of the amount paid by the Company by reason of the property having been over-insured. In the second place, wherever the owner puts forward a claim for his loss at the same time that the Insurance Company also claims the money paid by them in respect of the same loss, such a double claim must at once be absolutely rejected, since to allow it would be in effect to sanction the payment of the loss twice over."‡

This double claim is, however, made in a great number of cases. Thus, as to the whaling and fishing vessels, it is remarked:—

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* The English case of the Columbus, 2 W. Robinson, 158; the American cases of the Lively, 1 Gallison, 315; the Amiable Nancy, 3 Wheaton, 346; the Amistad de Rues, 5 Wheaton, 345.

† Appendix to British Case, vol. vii, p. 7.

‡ Ibid., p. 5.

Part X.

Conclusion.

Claims for private losses.

"The sums claimed by insurance companies in respect of the vessels we are now dealing with, as well as in respect of their secured and prospective earnings, amount to the sum of $902,832. On examining the list of claims, it will be seen that there are five cases, namely, those of the Alert, page 3 of the printed list, the Covington, page 184, the Catherine, page 181, the General William, page 192, and the Gipsey, page 192, in which the owners give credit for moneys they have received from their underwriters; but we believe it will also be found that these are the only cases in which that course has been adopted. In all the other cases the owners claim from Great Britain the total value of the ships and outfits, as well as their secured and prospective earnings, without deducting any sums received by them from the insurance companies; whilst at the same time the insurance companies also put forward their claim to those very same sums.

"It may be somewhat interesting to note the mode in which this double claim arises. The enumeration of the different items constituting a claim in respect of any one captured vessel, is preceded by the statement of the total sum claimed; then in most instances the different items are set out, consisting simply of the alleged values of the property or earnings lost, and these are followed by the claims made on behalf of insurance companies for the amounts paid by them to the owners in respect of the same property and earnings. With the exception of the five memorable cases just mentioned, the total claim is always formed by adding the first class of items to the second class, without making any deduction. In many cases this is done without any comment or notice whatsoever; in others, and especially in those relating to the Shenandoah, the owners frankly state that 'they claim the full value of their property, irrespective of the partial insurance received;' or boldly 'protest against any diminution of their claim by reason of insurance.' It follows, therefore, for reasons which have been already explained, that the sum of $774,183 obtained by deducting from the total amount of insurances the sum of $128,649, being the amount of the insurances in the five exceptional cases, represents losses which are, in effect, claimed twice over; and this simple consideration enables us, without hesitation or difficulty, to strike off *uno ictu* this sum of $774,183, or all but 10 per cent. of the total claim."*

As to claims for masters' wages, the Report observes:—

"A claim for loss of wages by the master has, we believe, never been allowed in the English or American Courts in cases of collision or capture, or other similar cases; in the second place, if such a claim were not inadmissible, it would be necessary to take into account the fact that the master probably obtained other employment, and thereby earned other wages after the capture of his vessel, as well as the fact that when he contracted with his owners, the risk of the vessel being captured was probably taken into account in fixing the wages; finally, it must be observed that the claim of the master for loss of wages when advanced at the same time, as it invariably is in the present case, with a claim by the shipowner for full freight, is not less unjust than the claim by the owner for the amount of his loss when followed immediately by the claim of the insurance company for the very same amount, for it is out of the gross freight that the wages would have been paid, and without such payment the gross freight could not have been earned."†

It must be added, that the claims for personal effects appear, in many instances, to be plainly exorbitant, and that claims are also made for personal losses of a remote and indirect kind, such as would never be allowed in the Courts of any country. Thus, heavy damages are claimed by one man for the loss of a valuable situation, and by another for the loss of an appointment as Consul, which he alleges himself to have sustained by detention on board the captured vessel.

The general result of this examination as to the private losses is, to reduce the estimated amount of the claims on account of the Alabama from $6,537,611 to $3,288,851, of the Florida from $3,693,302 to $2,635,568, of the Shenandoah from $6,366,894 to $1,377,316, and the total amount claimed from $17,763,910 to $8,039,685; and this is believed to be a liberal, as it is certainly a careful, estimate.‡ Whether any part of this latter sum—and if any, how much—might with justice be charged against Great Britain, is, as the Arbitrators have been reminded, an entirely distinct question, depending on the decision of the Arbitrators as to the existence and the extent of any liability on the part of Great Britain in respect of the several vessels to whose acts respectively the different constituent parts of this aggregate loss are to be ascribed.

Her Majesty's Government supposes that the Government of the United States has deemed it proper to accept and present to the Arbitrators the amounts at which the several private claimants have stated their own losses, as sufficient for the immediate purpose of the present proceeding. But the Arbitrators must be well aware that claims of this nature, put forward by private persons, cannot safely be accepted, even as furnishing materials for *primâ facie* estimate, without strict scrutiny, and it is clear that this remark applies very forcibly to the claims now under consideration.

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* Appendix to British Case, vol. vii, p. 16. † Ibid., p. 13. ‡ Ibid, p. 38.

Claims for National Losses by the destruction of Public Property of the United States.

Claims for national losses by the destruction of public property of the United States.

The claims for public property of the United States destroyed by Confederate cruizers relate to the war-steamer Hatteras, sunk in action by the Alabama; to the barks Greenland and Whistling Wind, said to have been laden with coal, and destroyed respectively by the Florida and a Confederate vessel called the Coquette; and to the steam revenue-cutter Caleb Cushing, cut out and destroyed by the Archer, which is alleged to have been acting as a tender to the Florida.

The Hatteras was detached from Commodore Bell's squadron, then blockading Galveston, to chase the Alabama, which had appeared in the offing. The destruction of this ship appears to have been clearly due to the failure of the squadron to support her; and Her Majesty's Government conceives that the claim on account of her is, on this ground, inadmissible, supposing that it could be supported on other grounds.

The case of the Caleb Cushing betrays such remissness on the part of those entrusted with the charge and defence of the great fortified harbour of Portland (where this revenue-cutter lay), in allowing her to be cut out under the very guns of the fort by the boats of an armed vessel which had been a small fishing schooner, that, even should the Tribunal hold that Great Britain has incurred any liability to the United States for captures made by tenders of the Florida, this claim ought not to be entertained.

As to the Whistling Wind, it must be observed that the Coquette, by which she is said to have been captured, is not mentioned in the Case of the United States as a tender to the Florida, and there is no evidence, so far as Her Majesty's Government is aware, that she was such.

Claims for Expenditure alleged to have been incurred in the pursuit of Confederate Cruizers.

Claims for expenditure alleged to have been incurred in the pursuit of Confederate cruizers.

In the second of the two Reports above referred to (that from the Committee appointed by the Board of Admiralty) the Arbitrators will find an examination of the claims presented on this account. It is obviously impossible, without any materials whatever for verification or comparison, to ascertain whether the several items for coal, outfit, expenses of navigation, and the like, do or do not correctly represent the actual expenditure under these various heads. Her Majesty's Government deems it necessary to point out that these accounts contain many obvious errors,* many discrepancies, which there are no means of reconciling, and a great number of charges which, in the absence of explanation, cannot but be deemed excessive.†

It must be further observed, however, that these claims for expenditure include not only vessels stated to have been employed in seeking for the several cruizers specified in the United States' Case, including the Sumter and the Tallahassee (which were fitted out in Confederate ports), but also others despatched after the Rappahannock (which is not among the specified vessels, and on account of which the Case makes no claim), and the Chesapeake (which is not even mentioned in the Case), and others again, which were employed in the general duties incidental to a state of war, such as convoy, the protection of fisheries, intercepting blockade-runners and ships laden with contraband of war, and cruizing in search of enemy's privateers generally. Sailing orders, in which this general description is employed, cannot be treated as having reference to any of the specified vessels; and in several instances the dates conclusively prove that there could have been no such reference. Again, the claim for expenditure in respect of a United States' cruizer despatched in pursuit of a particular Confederate ship is sometimes prolonged considerably beyond the date when the capture or destruction of that ship must have become known to the Commander of the cruizer, and during a time therefore when he must have been employed on other service. There are cases again (such as that of the De Soto‡), in which it is clear that a cruizer alleged to have been in quest of a Confederate ship must

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* For example, the whole amount of the Sheppard Knapp's outfit is charged, although in the official account of her loss in the Report of the Secretary of the United States' Navy to Congress of the 7th December 1863, p. 556, it is stated that "her battery (11 guns) and appointments, ordnance, yeomans' and masters' stores, instruments and charts, provisions and clothing, spars, sails, running and standing rigging, anchors and chains, everything portable and of value to the Government, has been saved. The only loss is the hull and the use of the ship."—Appendix to British Case, vol. vii, p. 90.

† For example, the charges under the head of medicine and surgery amount to $28,664·24. The Medical Director-General of Her Majesty's Navy states that 2,500*l.* would probably cover the charge for medicines and medical stores for 7,600 men for 303 days in Her Majesty's Navy. And this appears to have been the total of the complements of the United States' cruizers.—Ibid., p. 93.

‡ Appendix to British Case, vol. vii, p. 74.

have much more than paid her expenses by the prizes made by her whilst nominally employed on that errand.

Claims for expenditure alleged to have been incurred in the pursuit of Confederate cruizers.

The result of a careful and, as Her Majesty's Government believes, a fair and just examination of these claims, upon the data presented by the United States themselves, is that, even were it possible to hold Great Britain liable for all expenditure incurred in the "pursuit" of all the Confederate vessels specified in the United States Case, the amount could not exceed $1,854,715·99:—were the expenditure limited to the Florida, Alabama, Georgia, and Shenandoah, it could not exceed $1,509,300·74:—were it limited to the Alabama, it could not exceed $1,427,685·03: and these figures would require considerable abatement. The amount claimed by the United States on this score is $7,080,478·70.*

It is needless to remind the Arbitrators that claims of this nature are subject to the same observation as has been made with respect to the claims for private losses. It would be plainly unreasonable to contend that, if any failure of duty could be established against Great Britain in respect of a given vessel, all that may have been expended by the United States in trying to capture her must be assumed to be chargeable against this country. But the British Government takes exception to this class of claims altogether. It cannot be admitted that they are properly to be taken into account by the Arbitrators, or that Great Britain can fairly be charged, at once with the losses which a belligerent cruizer has inflicted during her whole career, and with what the United States may think fit to allege that they spent in vainly endeavouring to capture that cruizer. Such demands are unheard-of, and were never before suggested, even in those cases in which the attempt has been made to obtain compensation for actual losses. By what test, it may reasonably be asked, would it be possible to try the propriety of such an alleged expenditure? How are the Arbitrators to judge whether the ships said to have been employed were properly selected for the purpose, sent to the proper places, and furnished with proper instructions, and whether those instructions were executed with activity and judgment? On these things, however, amongst others, the propriety of the expenditure depends. In truth, there is but one test possible; it is that of success within a reasonable time. Tried by this test, the claim must fail, even if it were open to no other objections.

Her Majesty's Government is naturally reluctant to criticize the management of the United States' navy, and desires to say as little as possible on this point. But a few brief remarks on it are made necessary by the claims of the United States; and it is difficult to resist the conviction that, if well-appointed vessels of competent speed and strength had been dispatched in the directions which knowledge and experience would indicate, and if favourable opportunities had not been lost or thrown away, the list of captures by Confederate cruizers would have been comparatively small.

Let us take, as the earliest example, the escape of the Sumter from the Mississippi. This is described by the Secretary of the Navy in his Report to Congress, dated the 1st December, 1861, p. 8:—

> "Such of these (the Confederate) cruizers as eluded the blockade and capture were soon wrecked, beached, or sunk, with the exception of one, the steamer Sumter, which, by some fatality, was permitted to pass the Brooklyn, then blockading one of the passes of the Mississippi, and after a brief and feeble chase by the latter, was allowed to proceed on her piratical voyage. An investigation of this whole occurrence was ordered by the Department."

With regard to the Alabama, it has been seen that the Tuscarora, being in the United Kingdom at the time the former surreptitiously left Liverpool, failed to follow and intercept her. This appeared to the United States' Minister in London to show a want of that promptitude and judgment which ought to have been evinced under the circumstances, and he evidently believed it probable that the Tuscarora would have succeeded in intercepting her, had the needful activity and despatch been used.

Again, she was blockaded in the harbour of Port Royal, Martinique, on the 19th November, 1862, and although private signals from a ship in the harbour were made to the United States' steamer San Jacinto, then off the entrance, the Alabama on the same evening escaped the vigilance of the San Jacinto.

Again, she was off Galveston on the 11th January, 1863, and was seen by the ships of Commodore Bell's squadron; and the flashes of the guns, while the engagement between her and the United States' ship of war Hatteras was taking place, were plainly visible, and the sound of the guns heard. At 7·30 P.M. the Brooklyn, the Commodore's flag-ship, went in pursuit, steering S. $\frac{1}{4}$ E. in the direction of the flashes. The Sciota was

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* Appendix to British Case, vol. vii, pp. 63; 111.

sent out S.S.E., and the Cayuga S.S.W., but these vessels failed even to see the Alabama. The Commodore, in his official despatch of the 12th January, 1863 (p. 319 of the United States' Secretary of the Navy's Report to Congress), states that "three or four vessels like the Oneida thrown into the Yucatan Channel *immediately*, would probably intercept him. The gun-boats are not a match for him in force or speed."* Had, therefore, the Brooklyn and her consorts followed up the pursuit until the following morning, it is probable the Alabama would have been in sight; and, if so, she might have been captured. Captain Semmes, in his account of his voyage, makes the following observation: "By their account of the course steered, they could not have failed to have seen us."

Again, the Secretary of the Navy, in his Report to Congress, dated 7th December, 1863, p. 23, pronounces the following censure on the improper employment of the Vanderbilt:—

"In derogation of these special and explicit orders, Acting Rear-Admiral Wilkes, on falling in with the Vanderbilt, transferred his flag to that vessel, and, attaching her to his squadron, detained her in his possession so long as to defeat the object and purpose of the Department. He did not release her until the 13th June, when Commander Baldwin proceeded to carry out his instructions, but he was too late. He arrived at Fernando Noronha on the 4th July, at Pernambuco on the 6th, at Rio de Janeiro on the 14th; thence he proceeded on the 2nd August to St. Helena, *instead of going direct to the Cape of Good Hope.* The unfortunate detention of the Vanderbilt wholly defeated the plans of the department for the capture of the Alabama, Florida, and Georgia. They, as the Department anticipated, arrived in those latitudes and visited those ports in May, but the Vanderbilt, instead of being there to receive them, as the Department intended, was improperly detained in the West Indies until after that period."

The Florida, after having been seized and tried at the Admiralty Court of Nassau and subsequently released, proceeded to the Gulf of Mexico, and in the middle of the day of the 4th September, 1862, boldly passed through the blockading squadron off Mobile, and ran safely into the harbour.* For this act of remissness on the part of the commanding officer of the United States' blockading squadron he was dismissed from the United States' navy. She remained specially blockaded until January 1863, when she again succeeded in running through the blockading squadron. She passed close to several of the ships, but was not stopped; and one of the fastest, which was specially charged with the duty of watching and following her, is stated never even to have slipped anchor in chase. Under such circumstances, when on two separate occasions she might have been captured (either on the 4th September, 1862, or 15th January, 1863), but escaped unscathed by the ships of war specially blockading her from ingress as well as egress, Her Majesty's Government is unable to understand on what principle any claim can be sustained for losses occasioned by this ship, which up to this date (the 15th January, 1863) had not captured a single vessel of the United States, still less for the expenses incurred in failing to capture her.

In the course of her subsequent proceedings the Florida arrived at Brest on the 23rd of August, 1863; remained there refitting and repairing until February 1864, during which period she was taken into a Government dock, and made considerable changes in her crew. On the 17th of September the United States' ship of war Kearsarge arrived in Brest Roads, and remained at anchor with her fires banked until the 30th October. She again returned on the 27th November, on the 11th and 27th December, and the 3rd January, 1864, no doubt with the express object of watching the Florida, which was at anchor in the roadstead, nearly, if not quite ready for sea; and the Confederate cruizer eventually sailed from Brest in charge of a pilot on the evening of the 9th February. The Kearsarge, however, had disappeared from the coast, and had not been seen since the evening of the 3rd of January; but she again returned on the 18th February, when, as it was to be expected, the Florida had disappeared from the anchorage.

Her Majesty's Government have been unable to discover that any ships of war of the United States were ever specially sent in pursuit of the Georgia or Shenandoah; although in the remarks of the Secretary of the United States' Navy in his Report to Congress, above quoted, the Georgia is named with the Alabama and Florida. Those three vessels were, it appears, known to the United States' Naval Department to be somewhere on the Equator or on the Coast of Brazil; and there, had a flying squadron been at once sent in pursuit, one or more of them, if not all, would probably have been captured. It is to be remarked that, during the whole time the Alabama was at sea, she was only met on two occasions by ships of the United States' Navy, until she voluntarily engaged and was sunk by the Kearsarge, off Cherbourg, on the 19th June, 1864. On the first

* Appendix to the Case of the United States, vol. vi, p. 332.

Claims for expenditure alleged to have been incurred in the pursuit of Confederate cruizers.

occasion she escaped from Port Royal, Martinique, when virtually blockaded by the San Jacinto in November 1862; on the second, she engaged and sunk the Hatteras, off Galveston, on the 11th January, 1863. Nor does it appear that either the Georgia or Shenandoah, during their respective cruizes, ever fell in with a ship of war of the United States.

Her Majesty's Government cannot but observe that, among the United States' ships for which claims are made, as having been employed in the pursuit of Confederate cruizers, there are several which would have been worse than useless for such a purpose. If the Onward of 874 tons, or the Ino of 895 tons, converted merchant-vessels without steam-power, which are represented as having been sent in search of the Alabama, had fallen in with that ship, they must inevitably have been destroyed. The same observation applies to other sailing vessels of the same class, such as the Gemsbok, National Guard, and Sheppard Knapp, and still more strongly to the George Mangham, a mortar (sailing) schooner of 274 tons.*

With the large naval force at the disposal of the Government of the United States, Her Majesty's Government cannot forbear to observe that it appears extraordinary that more energy was not displayed in pursuing and following up the few small Confederate cruizers to which the claims against Great Britain relate. The losses now complained of would have been reduced to a minimum, had effective measures been used to protect the commerce of the United States by the establishment of one or more flying squadrons, with orders to follow them anywhere and everywhere, and not confined, as Admiral Wilkes' flying squadron was, to a very restricted station.

It is clear, indeed, from the Report of the Secretary of the Navy, quoted above, that he was himself conscious that the utmost efforts of the United States were not put forth to pursue and capture these Confederate vessels. This duty was deliberately held to be subordinate to that of maintaining the blockade:—

> "In addition to the few vessels stationed abroad to guard our national interests, others have from time to time been dispatched in pursuit of the rovers, all of which were built in and have gone abroad from foreign ports to prey upon our commerce. The details of all the measures which have been adopted by the Department in this view it is not necessary here to disclose. But with most of our naval vessels engaged in enforcing the blockade, and without a clue to guide our independent cruizers on the trackless ocean, they have thus far been unable to encounter these semi-piratical vessels, which always seek to evade a naval antagonist. Were the probabilities greater than they are, however, of encountering them, and were our public naval vessels permitted to enter the ports of the maritime powers for fuel and other supplies when in pursuit, it would not promote the interests of commerce nor the welfare of the country to relax the blockade for that object."

The foregoing observations have, it will be observed, a material bearing not only on the claims for national expenditure, but on all the claims for compensation which are advanced by the United States. It would be unjust to hold that a neutral nation is liable for losses inflicted in war, which reasonable energy and activity were not used to prevent, on the plea that the vessels which were instrumental in the infliction of the loss were procured from the neutral country, even though it may be alleged that there was some want of reasonable care on the part of the neutral Government. The utmost period, over which a liability once established on the ground of default could be extended on any rational principle, would be that which must elapse before the aggrieved belligerent would have, by the use of due diligence and proper means on his own part, the opportunity of counteracting the mischief.

Claim of the United States for interest.

Claim of the United States for Interest.

On the claim for interest, which is advanced by the United States, Her Majesty's Government must observe, that it is, in principle, untenable. The claims referred to the Arbitrators are, it must not be forgotten, claims of the United States, not of private persons, against Great Britain, although a large proportion of them may represent losses alleged to have been sustained by private persons. Interest, on general principles recognized in the jurisprudence of all countries, and founded on reason, can be claimed only (in the absence of a specific agreement) where a debtor is *in morâ;* that is, where default has been made in payment of a liquidated debt at the time when it ought by law to have been paid, there being no *mora accipiendi,* or delay interposed on the part of

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* Appendix to British Case, vol. vii, p. 58.

the creditor. It is evident that these conditions do not apply to a case in which a mass of doubtful claims, of unascertained amount, have been made by one nation against another, have from time to time been the subject of negotiation, and are at length referred to Arbitrators. It is through no fault of Her Majesty's Government that these claims were not submitted to arbitration in 1867, or again in 1869; and it is not for the United States, which five years ago refused to agree to a reference, and three years ago refused to ratify a Treaty actually concluded for this purpose by their Representative in England, to insist on a delay, of which they were themselves the cause, as a ground for increasing their demands upon Great Britain.

Claims for expenditure alleged to have been incurred in the pursuit of Confederate cruizers.

Recapitulation of preceding Remarks on the Measure of Compensation.

To recapitulate what has been said on this branch of the subject:—

Recapitulation of preceding remarks on the measure of compensation

The losses which may be taken into account by the Arbitrators are at the utmost those only which have directly arisen from the capture or destruction, by one or more of the cruizers enumerated in the Case, of ships or property owned by the United States or by citizens of the United States, and the extent of the liability of Great Britain for any such losses cannot exceed that proportion of them which may be deemed justly attributable to some specific failure or failures of duty on the part of her Government in respect of such cruizer or cruizers.

It is the duty of the Arbitrators, in deciding whether claims for compensation in respect of any particular default are tenable, and on the extent, if any, of liability incurred by such default, to take into account not only the loss incurred, but the greater or less gravity of the default itself, and all the causes which may have contributed to the loss, and particularly to consider whether the alleged loss was wholly or in part due to a want of reasonable activity and care on the part of the United States themselves.

The claims for money alleged to have been expended in endeavouring to capture or destroy any Confederate cruizer are not admissible together with the claims for losses inflicted by such cruizer.

The claims for interest are not admissible.

Should the Tribunal award a sum in gross, this sum ought to be measured by the extent of liability which the Tribunal may find to have been incurred by Great Britain on account of any failure or failures of duty proved against her.

The estimates of losses, public and private, presented by the United States are so loose and unsatisfactory, and so plainly excessive in amount, that they cannot be accepted even as furnishing a *primâ facie* basis of calculation. The estimates of expenditure (were the claims on that head to be considered admissible) would likewise be found too unsatisfactory to serve a like purpose.

Her Majesty's Government is sensible that, should the Arbitrators find it necessary to approach this question, they will probably find it one of no inconsiderable difficulty. The foregoing considerations are intended to circumscribe it, at least, within just and reasonable limits, and, subject to these considerations, the British Government leaves it to the impartial judgment of the Tribunal.

In concluding this Counter-Case Her Britannic Majesty's Government thinks it right to advert, in a few words, to considerations which invest this controversy with an importance not, perhaps, so great as is ascribed to it in the Case of the United States, but sufficient to make it a matter of profound general interest. The discussion turns on the duties and responsibilities of neutrals; and the field of discussion embraces questions of principle, questions of fact, and questions of peculiar moment respecting the application of principles to facts. The United States have asked the sanction of the Arbitrators to conceptions of neutral duty, and still more of neutral liabilities, which, to the British Government, appear to be fraught with grave consequences, and to demand serious attention. These views, theoretically stated in an earlier part of the American Case, are embodied in a practical shape by the charges advanced against Great Britain; and they assume a still more formidable aspect when they are invoked to support large claims for pecuniary reparation. For the first time in history, as the British Government believes, it has been seriously insisted that every act or omission, however doubtful or insignificant, on the part of a neutral Government or its officers, which could be construed by a belligerent into a deviation from the line traced out for neutrals by international law and practice, may be made the foundation for pecuniary demands upon the neutral Power, such as are now urged against Great Britain. If this be so, it becomes a matter of the highest

moment that the rules binding on neutrals should be simple and few. But what, according to the Case of the United States, must be the ordinary situation of a neutral in a maritime war? It must be a situation of perpetual and unremitting anxiety, surrounded by dangers, harassed by a crowd of new obligations unknown in peace, which nothing short of sleepless vigilance will satisfy, whilst any lapse in the performance of them, on the part even of a subordinate officer, is to be visited with heavy national penalties. The transactions of private commerce must be made the object of minute inquisition and incessant supervision; private persons, suspected of being agents of either belligerent, must be tracked, when within the neutral country, by spies and informers; trade with the belligerent nations must be fettered by restraints and prohibitions; the hospitalities ordinarily extended to belligerent ships in ports of the neutral must be guarded with precautions, for the strict enforcement of which no honesty or zeal on the part of the local authorities can afford an adequate guarantee. Laws and regulations enacted by the neutral nation with a view to its own protection, far from being a means of security, become an additional source of danger, when they are liable to be construed as acts by which the neutral establishes as against himself, by admission or otherwise, a new class of international obligations. Is this picture overdrawn? It can hardly be thought so, when we pass in review the various articles of the long indictment preferred by the United States against Great Britain, and the statements and arguments which have been used in support of them.

It is evident that, if these principles were to be generally adopted, the only prudent course for neutral powers would be to enact no regulations, repeal all laws which could be interpreted as admissions against themselves, exclude all belligerent vessels of war from their ports, prohibit all traffic with belligerent nations. But even this would not be enough, since it is difficult—perhaps, impossible—for maritime States, by any legislative or administrative precautions, to isolate themselves and their subjects completely from all contact with a maritime war. States, especially the less powerful, would be tempted to abandon a position so precarious, and menaced by such heavy penalties; to choose, in preference, the certain evils of war itself; and to seek protection in an alliance with one belligerent or the other.

The British Government is convinced that the Arbitrators will not give any sanction to views of neutral obligation, to which not even the authority of this Tribunal could secure the general assent of neutral Powers. Nay, the British Government is persuaded that these extreme views, though, for the sake of argument, they have been insisted on in the Case of the United States, are not thoroughly realized, and would never, in practice, be accepted as binding, by the United States themselves.

The conceptions of neutral duty which have been stated to the Arbitrators on the part of Great Britain are those on which she has constantly acted, and is prepared to act in future, and which she believes to be upheld by reason, by authority, and by the general consent of nations. It is the right of a State which remains at peace, whilst others are at war, that its relations with foreign countries, and the duties it owes to them as a member of the society of nations, should, as far as is possible, continue to subsist unaltered by discords from which it stands aloof, and wherein it has no share. Impartiality in act; the exercise of reasonable care to prevent itself from being made, even against its will, a virtual participant in the war, whilst claiming the advantages and immunities of peace; this is all that the neutral is bound to give, or the belligerent entitled to require. Great Britain has laid before the Arbitrators, with a fulness and minuteness of detail rendered necessary by the long train of accusations she has had to meet, the acts of her Government and of its officers, and every ascertained fact and circumstance which can be material to a decision; and she leaves with confidence to their judgment, and to that of the world, the question whether her obligations as a neutral were not fairly discharged towards the United States during the Civil War.

Finally, Her Britannic Majesty's Government desires to express its earnest hope, in which it is assured that the Government of the United States will cordially share, that the frank and open statement of facts as they actually occurred, may effectually remove every misunderstanding between nations allied by innumerable ties to one another.

ANNEX (A).

Note on the Question referred to at p. 12.

THE subjoined citations bearing on the question referred to in p. 12, are taken, as will be seen, with few exceptions, from works published before the question in controversy arose:—

"Celui-là au contraire blesse les devoirs de la neutralité qui, sans engagements antérieurs, permet à l'une des Puissances belligérantes le passage ou la levée de recrues, en les défendant à l'autre, ou bien qui tolère sur son territoire les préparatifs militaires de l'une des Puissances belligérantes en lui permettant d'occuper telle forteresse, en souffrant des rassemblements militaires, des armements en course, &c.; et c'est en vain qu'il se parerait du prétexte d'être prêt à en faire autant en faveur de la partie adverse."—*Martens, Précis du Droit des Gens Moderne de l'Europe* (Vergé's edition, 1858), book viii, chap. vii.

"El armar buques para el servicio de la guerra, aumentar sus fuerzas, aderezarlos, preparar expediciones hostiles, son actos ilegitimos en territorio neutral, y las capturas subsiguientes á ellos se miran como viciosas en el foro de la potencia neutral ofendida, que tiene derecho para restituir la presa á los primitivos propietarios, si a sus puertos fuere conducida." . . . "Nada se opone á qué los beligerantes apresten naves de comercio en los puertos neutrales, las tripulen y surtan de todo lo necesario; lo cual se extende á las naves que pueden destinarse indistintamente al comercio ó la guerra."—*Pando, Elementos del Derecho Internacional*, § 192. (Madrid, 1852.)

"Nach der dritten Regel des vorigen Paragraphen darf der neutrale Staat einer kriegführenden Partei weder Mannschaften noch auch Schiffe für ihre Kriegsunternehmungen zur Disposition stellen, auch keine Waffenplätze oder Schiffsstationen für feindliche Unternehmungen einräumen, noch endlich Geldmittel zum Forbetriebe des Krieges zufliessen lassen. Für erlaubt hielt man ehedem zwar die Vermiethung und gewissermassen Seelenverkäuferei von Truppen an einen kriegführenden Theil, selbst ohne einen dem Kriege vorausgegangenen Vertrag; theils machen jedoch die constitutionellen Rechte der Völker dergleichen heut zu Tage unmöglich; theils wird auch, wenn es noch vorkäme, ein Kriegspartei durch kein Herkommen gehindert, einen solchen Truppenlieferanten nach ihrem politischen Interesse zu handeln. Eben so war es eine vormals sehr gehwöhnliche Meinung, ein neutraler Staat dürfe einer kriegführenden Macht gestatten, sein Gebiet für ihr Angriffs- und Vertheideigungssystem zum Schaden des Gegners vorübergehend zu benutzen, falls man diesem selbst auch das Nämliche zu erlauben bereit wäre, z. B. einen Durchzug von Truppen oder die Durchführung von Schiffen durch das neutrale Wassergebiet, ferner die Anhaüfung von Magazinen, Ausrüstung von Truppen, Kreigschiffen und Capern; allein es lassen sich dergleichen Vergünstigungen mit dem Wesen strenger Neutralität nicht vereinbaren. Denn es wird darin immer ein actueller Gewinn für den Begünstigten in seinen Unternehmungen liegen, und die Umstände werden selten so geartet sein, dass aus solchen Gestattungen kein wirkliches Präjudiz für die andere Partei entstehen könnte; meistens wird die Lage eines neutralen Landes für die eine Kriegspartei günstiger sein als für die andere, demnach ihre Benutzung von Seiten der Einen wirkliche Förderung ihrer feindlichen Zwecke gegen die andere Partei. Nur bei völliger Unverfänglichkeit der Verhältnisse und Zustande würde daher der Neutrale Zugeständnisse der angegebenen Art machen dürfen; unter allen Umständen aber fordert es der gute Glaube und die Klugheit, sich mit dem anderen Theile hierüber zu verständigen. . . . .

"Durch das vorstehende sind mit Berücksichtigung der wichtigsten Falle die engsten Grenzen gezogen, innerhalb deren sich die Unparteilichkeit der neutralen Staatsgewalten halten musz. Was nun diese zu thun nicht berechtiget sind, darf im Allgemeinen auch ihren Unterthanen nich gestattet werden. Inzwischen kann dadurch die Freiheit der Einzelnen nicht so völlig beschränkt werden, als es für die Staatsgewalt selbst, mithin auch für die Masse der Nation, Gesetz der Neütralität ist. Es kann daher keine Regierung, den Fall ausdrücklicher Vertragsverbindlichkeit ausgenommen, dafür verantwortlich gemacht werden, wenn einzelne ihrer Unterthanen freiwillig in der einen oder anderen Weise an einem fremden Kriege Theil nehmen, wenn sie sich mit einer Kriegspartei in Lieferungs- und Darlehn-Geschäfte einlassen, oder in die Truppenreihen derselben eintreten, einem kriegerischen Drange oder besonderen moralischen Interessen an der Sache dieser Partei nachgehend. Im äussersten Falle würden hier nur die Grundsätze von der Auswanderung der Unterthanen zur Anwendung kommen. Sollte freilich die Theilnahme der Unterthanen eine massenhafte werden, dadurch die Aufmerksamkeit und Bedenklichkeit der Gegenpartei erregen, demnach Repressalien derselben befürchten lassen: so wird es von dem politischen Ermessen der betheiligten Staatsgewalt abhängen, ob und wie weit sie dagegen einschreiten wolle, jedoch nicht aus Pflicht gegen den kriegführenden Theil, sondern lediglich aus

Annex (A).

Rücksicht auf das eigene Staatswohl. Als Verletzung der Neutralitätspflicht darf nach neuerem Brauch die Erlaubniss zur Annahme zon Caperbriefen und Ausrüstung von Caperschiffen angesehen werden."—*Heffter: Das Europäische Völkerrecht der Gegenwart*, §§ 147, 148 (3rd edition, Berlin, 1855).

The foregoing passages relate to hostile expeditions organized within and dispatched from the neutral country. Heffter, where he speaks of the act of furnishing vessels constructed for war to a belligerent, introduces it under the head of contraband:—.

"Da sich neutrale Staaten und deren Unterthanen durch unmittelbare Gewährung einer Kriegshilfe für den einen Theil gegen den anderen einer Verletzung der Neutralität schuldig machen, so ist letzterer unstreitig berechtiget, auf offenem Kriegsfelde dagegen einzuschreiten und die unbefugten Handlungen als feindselige zu ahnden. Hierunter fällt mit Beistimmung der Praxis:—

"*a.* Die freiwillige Zuführung von Mannschaften für den Land- und Seekrieg;

"*b.* Die freiwillige Zuführung von Kriegs- und Transportschiffen;

"*c.* Die freiwillige Beförderung von Depeschen an oder für einen Kriegführenden.

"In Fällen dieser Art, wofern sie wirklich constatirt werden, wird nich allein die Wegnahme, sondern auch die Aneignung des Transportmittels, ja sogar der übrigen Ladung gegen den von dem verbotenen Zwecke der Reise unterrichteten neutralen Eigenthümer zulässig gehalten, obwohl nicht immer mit gleicher Strenge gehandhabt. In der That liegt darin eine Selbsthilfe, welcher der Neutrale unterworfen werden darf, der sich zum Complicen oder geheimen Gehilfen des Feindes gemacht hat."—§ 157 b.

The foregoing passage has been extracted in the Case of the United States (page 196) from a French translation of Heffter's work, in which it will be observed that a change of expression is introduced. The substituted words are:—

"*b. La construction* dans les ports neutres de vaisseaux de guerre ou de commerce pour le compte de l'ennemi, *dès leur sortie.*"

Heffter himself, in his 5th edition, published in 1867, retains the words he had previously used, while he re-casts the remainder of his paragraph, entitling it "Analoge Fälle der Kriegscontrebande," omitting the opening sentence, and merely stating that the three classes of acts specified fall under the head of contraband "improper" ("uneigentliche Kriegscontrebande").

Heffter here couples the act of furnishing a vessel of war to a belligerent with that of furnishing him with a transport, and also with that of transporting troops for a belligerent from place to place. That these are not acts which the neutral Government is under any obligation to prevent, has been constantly held by the United States.

The doctrine thus enunciated by Heffter is that of all previous writers of authority.

Ships of war, exported from a neutral territory for the use of a belligerent, had always been ranked among articles contraband of war, without any indication of a difference, in the view of International Law, between them and other articles of direct use in war.

In the *Treaty of December* 21, 1661, between Charles II of England and Charles XI of Sweden, which is stated by Azuni (*Système Universel*, &c., tom. ii, art. iv, § 16, page 121, note), to have "servi de règle à un grand nombre d'autres postérieures," it is provided, "Ne merces ullæ vocatæ contrabandæ, et specialiter" (inter alia) "*naves bellicæ, et præsidiariæ* hostibus suppeditandæ, devehantur ad alterius hostes sine periculo, si ab altero confæderatorum deprehendantur, quod prædæ cedant absque spe restitutionis."

In the *Convention of London* (*July* 25, 1803) between Great Britain and Sweden, certain additions were made to the list of articles contraband of war enumerated in the previous Convention of 1801 between Great Britain and Russia, among which additions were "ships of war."

Rutherforth, in his "*Institutes*," 1756, chapter xix (on Contraband of War), wrote: "When a war is carried on by sea, as well as by land, *not only ships of war which are already built*, but the materials for building or repairing of ships, will come under the notion of warlike stores."

Hübner (an author who has been referred to in the Case of the United States as having given the best definition of neutrality) in enumerating the "cas où les bâtiments neutres sont saisissables," ranged under this head vessels built in a neutral port to the order of a belligerent: "Quand ce sont des navires de guerre construits dans un port neutre pour le compte ou pour le service des parties belligérantes." *Saisie des Bâtiments Neutres*, vol. i, chap. vi, § 5. He classes this case with the transport of contraband and with breaches of blockade.

Martens (*Précis du Droit des Gens*, &c., lib. 8, chap. vii, § 318) also enumerates, among contraband articles, *ships of war.*

Galiani (according to Azuni, vol. ii, art. v, "De la Contrebande de Guerre," § 2, page 143), "Après avoir exposé les différentes doctrines des publicistes, en commençant depuis Grotius jusqu'à Lampredi, sur l'indication qu'ils ont donnée des marchandises dites de contrebande, finit par dire qu'après avoir montré par les lumières du bon sens et de la raison naturelle, quelles sont les justes bornes des classes de marchandises qu'on peut compter entre celles de contrebande de guerre, il ajoute en preuve que ce sont en effet, à peu de différence près, celles déterminées par presque tous les Traités de l'Europe. Il compte ensuite les genres qui, universellement et de tout temps, ont été regardés comme contrebande de guerre; il passe de là à ceux qui en ont toujours été exclus; et, enfin, sa troisième classe comprend les genres sur lesquels la question est restée indécise. Il range dans la première classe les hommes, les chevaux, les armes défensives et offensives de toute espèce, *et les vaisseaux de guerre.*"

Tetens (*Considérations sur les Droits Réciproques*, &c., 1805, sec. 3, nos. 3 & 4, on Contraband of War), enumerates *ships of war* among articles which are, according to his classification, contraband of the first order.

Piantanida (*Della Giurisprudenza Maritima*, 1806-8, tom. iii, pp. 44, 48, 62, On Prizes), among lawful captures enumerates that of neutral vessels, "*if armed for war.*"

Professor Lampredi, of Pisa, has always been justly regarded with respect as a learned and impartial writer. The main argument of his work on neutral commerce, which he wrote chiefly in refutation of some criticisms of the Abbé Galiani on a former treatise, is to vindicate the general right of neutrals to carry on their trade, in time of war, in the same manner as during peace, provided they do so impartially. And he asserts this right, within the neutral territory itself, to be absolute.

In part i, chap. 3, p. 32 (Peuchet's Translation, Paris, 1802), he says:—

"Lorsqu'une fois l'on a établi la seule loi que les peuples neutres doivent observer pendant la guerre, il devient inutile de demander quelles doivent être les limites du commerce qu'ils font en conséquence de leur neutralité, parcequ'on peut répondre qu'il n'en doit avoir aucune, et qu'ils peuvent le faire de la même manière qu'ils le faisaient en temps de paix, observant seulement une exacte impartialité pendant tout le temps de la guerre. *Il n'y aura donc aucune espèce de marchandises qu'ils ne puissent vendre et porter aux belligérans, et l'on ne pourra pas les empêcher de leur vendre ou louer des navires*, pourvu qu'ils ne refusent point à l'un ce qu'ils accordent à l'autre. Devant et pouvant suivre légitimement leur commerce comme en temps de paix, il ne doit y avoir aucune distinction de marchandises, d'argent, d'armes, et d'autres munitions de guerre; la vente et le transport de ces divers objets dans les places des belligérans doivent être permis, et ne point porter atteinte à la neutralité, pourvu qu'il n'y ait ni faveur, ni préférence, ni esprit de parti."

In chapter iv, page 46, he says: 'Si d'ailleurs l'interdiction du commerce des objets de contrebande était une loi naturelle de la neutralité, chacun voit que les peuples en paix qui font ce commerce pourraient être regardés comme ennemis, et que la guerre serait autorisée contre eux; ce qui n'est jamais arrivé et ne se fait point non plus de notre tems; preuve évidente que la violence faite à la liberté du commerce des neutres, en tems de guerre, a lieu et se tolère respectivement des deux côtés, parce que l'on en est ainsi tacitement convenu, et non parce que le droit naturel le prescrit ainsi."

In chapter v, page 57, he treats the question whether neutrals may sell every kind of merchandize within the neutral territory to a belligerent, as one which no jurist anterior to Galiani had ever thought of bringing into controversy; all their discussions being confined to the *carriage* of contraband to the enemy:—

"Il résulte de toutes les autorités que nous venons de rapporter, que la doctrine que nous exposons n'a été mise en doute par personne, et qu'elle a été regardée par tous les publicistes comme pacifique, et nullement contraire au devoir de la neutralité. Néanmoins l'Abbé Galiani a trouvé cette doctrine étrange et fausse; *et demandant si un navire construit et armé en guerre dans un port neutre serait réputé marchandise de contrebande si on l'y mettait en vente, il dit qu'on devrait le regarder ainsi.* Ensuite il nous attribue d'avoir les premiers établi que les neutres ne peuvent pas exporter des marchandises de contrebande à l'ennemi, mais qu'ils peuvent les vendre sur leur propre territoire à ceux qui se présentent, pourvu que ce commerce soit fait avec impartialité, et sans montrer plus de faveur à l'un qu'à l'autre des belligérans. Nous ne prétendons pas nous attribuer ce qui ne nous appartient pas. La doctrine que nous venons d'exposer, et qu'il appelle inouie, a été suivie, au moins implicitement, par tous les auteurs que nous venons de citer, puisqu'ils ne parlent uniquement que du transport des marchandises à l'ennemi et jamais de la vente que l'on peut en faire sur son propre territoire. Il y a plus: quelques-uns ont enseigné explicitement la même doctrine."

He then cites Wolf, and the following passage from *Vattel*:—

"Premièrement, tout ce qu'une nation fait en usant de ses droits, et uniquement en vue de son propre bien, sans partialité, sans dessein de favoriser une Puissance au préjudice d'une autre, tout cela, dis-je, ne peut en général être regardé comme contraire à la neutralité, et ne devient tel que dans ces occasions particulières où il ne peut avoir lieu sans faire tort à l'une des parties, qui a alors un droit particulier de s'y opposer. Disons encore, d'après les mêmes principes, que *si une nation fait commerce* d'armes, de bois de construction, *de vaisseaux*, de munitions de guerre, *je ne puis trouver mauvais qu'elle vende de tout cela à mon ennemi*, pourvu qu'elle ne se refuse pas de m'en vendre aussi à un prix raisonnable. Elle exerce son trafic sans dessein de me nuire, et en le continuant comme si je n'avais point de guerre elle ne me donne aucun juste sujet de plainte."

Pursuing the same subject, in chapter vi, page 65, Lampredi says:—"Si Galiani s'était donné la peine d'examiner ainsi attentivement la question, et de la rapprocher des principes que nous venons de développer, il se serait aisément aperçu que la difficulté qu'il élève, relativement à la vente des marchandises de contrebande, était absurde de droit et de fait, parce qu'il aurait senti que s'il est permis aux neutres, en vertu du droit naturel, de transporter aux belligérants quelque espèce de marchandise que ce soit, plus ils doivent, à bien plus forte raison, être autorisés à les vendre sur leur propre territoire."

In chapter vii, p. 72, he says:—"Le caractère de contrebande ne vient donc pas, aux marchandises, de l'usage qu'on peut en faire dans la guerre, mais de tout autre source. Aussi longtems qu'elles sont sur le territoire neutre, elles ne diffèrent pas des autres marchandises; elles s'y vendent et s'y achètent de la même manière et sans aucune différence. Deux circonstances font prendre à ces marchandises le caractère de contrebande: 1, qu'elles soient passées à la puissance de l'ennemi, ou à moins destinés à y passer; 2, qu'elles soient sorties du territoire neutre. Alors elles deviennent choses hostiles, *res hostiles;* elles prennent le caractère de marchandises de contrebande; et si elles sont trouvées hors de toute juridiction souveraine, comme, par exemple, si l'on les trouvait en pleine mer, elles peuvent être légitimement arrêtées et confisquées par l'ennemi, quel que soit le pavillon qui les couvre, non pas parce que ce soit des instruments ou provisions de guerre, mais parce que ce sont des choses appartenantes à l'ennemi, ou au moins parce qu'elles sont destinées à devenir sa propriété et à accroître ses forces. D'où il résulte que le souverain qui permet, sur son territoire, le commerce libre de *toutes sortes d'objets* ne passe pas les droits de souveraineté, et les puissances belligérantes ne peuvent s'en plaindre ni l'accuser de donner la main à la vente des marchandises de contrebande, qui, sur son territoire, ne peuvent jamais avoir ce caractère, et ne peuvent en porter le nom que lorsqu'elles sont devenues ou destinées à devenir la propriété de l'ennemi, et sorties du territoire où elles ont été achetées."

In chapter viii, Lampredi fortifies these views by a detailed examination of numerous Treaties, and of the practice of the different States of Europe; the result of which is sufficiently stated in the extract given below, from Wheaton's History of the Progress of the Laws of Nations.

Azuni (*Système Universel de Principes du Droit Maritime de l'Europe*, 1799, 1800, Digeon's translation) on all these points agrees with Lampredi. In vol. ii, chap. 1, art. 3, p. 31; he distinguishes

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between "commerce actif," consisting of exports to foreign nations, and "commerce passif," consisting of internal trade with foreigners.

In chapter ii, articles 1 and 6, page 56, he says:—"Une grande partie du commerce de quelques nations Européennes, telles que les Suédois, Norwegiens, et les Russes; consiste en marchandises nécessaires pour la guerre maritime, pour la construction et pour l'équipement d'une flotte; elles vendent en tems de paix, à quiconque en a besoin, du fer, du cuivre, des mâts, des bois, du goudron, de la poix et des canons, *enfin des navires de guerre entiers.* Quelles raisons pourrait-il y avoir de priver ces nations de leur commerce et de leur manière de subsister, à l'occasion d'une guerre à laquelle ils ne prennent aucune part? Il n'y a dans le code de la justice et de l'équité rien en faveur d'une telle protection. Il est donc nécessaire d'établir, comme maxime fondementale de tout droit, que les peuples neutres devant et pouvant licitement continuer le commerce qu'ils font en tems de paix, *on ne doit faire aucune distinction* de denrées, de marchandises *et de manufactures, quoique propres à la guerre,* et que, par cette raison, la vente et le transport aux parties belligérantes en sont permis, si le commerce actif et passif était établi en tems de paix, sans qu'on puisse prendre, en aucune manière, que la neutralité soit violée, pourvu que cela se fasse sans animosité, sans préférence et sans partialité."

In the same chapter, Art. 3, § 3, p. 83, he says, "Si le droit des gens universel permet aux neutres qui sont en possession de faire un commerce actif avec les nations belligérantes, le transport impartial de quelqu'espèce de marchandise à une d'elles, quoiqu'elle soit du nombre de celles appelées contrebande, par le même principe de raison, la vente des mêmes marchandises sur le propre territoire doit être permise, toutes les fois que la nation neutre aura fait avant la guerre un commerce passif avec la nation belligérante. Ainsi, le commerce général passif ou la vente impartiale sur le propre territoire des neutres, de marchandises, denrées, *ou manufactures, de toute espèce,* sera toujours permis, pourvu que le souverain n'ait pas fait un Traité particulier avec un des belligérants dont les sujets viennent faire des achats et des provisions sur le territoire neutre, et qu'il ne se mêle pas des achats, des ventes, et des autres contrats qui transmettent la propriété, qu'il n'ordonne pas qu'on remplisse les magasins de provisions de guerre, et ne fasse pas mettre ses navires à la voile pour les transporter sur le territoire du belligérant. En protégeant également le commerce de son pays, en permettant à ses sujets de continuer leur commerce de la même manière et avec la même liberté qu'avant la guerre, il ne fait qu'user de droits incontestables, qui ne peuvent être limités que par des conventions spéciales, expressément ou tacitement faites."

§ 5. "Malgre la solidité de ce principe fondamental, Galiani a voulu établir une théorie absolument contraire, non-seulement au principe que j'ai précédemment établi, mais encore à tous les autres principes qu'il a adoptés dans son ouvrage.

§ 6. "Après avoir enseigné avec raison que la neutralité n'est pas un état de chose nouvelle, mais la continuation d'un ancien état; après avoir ajonté que l'état de neutralité n'est et ne peut être un nouvel état dans lequel passe une souveraineté, mais une permanence et une continuation du précédent, qui est tel, parce qu'il n'est pas survenu de nouvelles causes qui l'obligent à changer, il en conclut (au grand étonnement de quiconque est dans son bon sens) que les neutres ne peuvent vendre sur leur propre territoire, comme ils le faisaient auparavant, aux sujets des nations belligérantes, des armes, des instruments et d'autres munitions de guerre. Mais si la guerre, comme il le dit, n'apporte aucun changement au premier état d'un peuple neutre, si la guerre n'anéantit pas les droits qu'il avait en tems de paix, par quelle raison, dis-je, doit-il abstenir de faire le commerce qu'il faisait avant la guerre? Par quelle raison sera-t-il obligé de changer son état, qui, selon les propres principes de Galiani, ne doit, au moyen de la neutralité qu'il a adoptée, être altéré en rien? *Par quelle raison, enfin, ne pourra-t-il pas vendre dans un port neutre un vaisseau propre à la navigation, avec les attirails de guerre?* On n'en trouve pas d'autre dans Galiani que celle de la confusion qu'il a jetée dans ses théories, en se laissant transporter par l'esprit de parti, lorsqu'il a voulu réfuter l'opinion de Lampredi, qui soutient le contraire. C'est précisément alors que la vérité se cache dans les ténèbres de ses subtiles raisonnements et de ses ingénieux paralogismes. Il est donc nécessaire que je répète ici le principe incontestable que j'ai précédemment rapporté, qu'en suivant le droit conventionnel de l'Europe, les neutres ne peuvent porter les choses qui sont spécialement propres à la guerre, et qui y sont directement employées, mais qu'ils peuvent sans inconvénient, selon le droit universel des gens, les vendre comme marchandise sur leur propre territoire à quiconque se présente pour les acheter, puisqu'ils le font sans partialité, et sans montrer de faveur plutôt pour une partie belligérante que pour l'autre."

No European writer, before 1858, had advanced any doctrine at variance with the passages above cited from Lampredi and Azuni, except so far as Galiani had done so; and the doctrine of Galiani, as is shown in these extracts (and in other passages of the same writers), was not only novel, but inconsistent with itself.

In England there is no trace of a different doctrine having been held or advocated by any jurist; although the interest of England in this class of questions had been generally that of a belligerent. In 1721, on the occasion of a complaint being made by the Minister of Sweden that certain ships of war had been built in England and sold to the Czar, the Judges were ordered to attend the House of Lords and deliver their opinions on the question, whether the King of England had power to prohibit the building of ships of war, or of great force, for foreigners, and they answered that the King had no power to prohibit the same.—*Fortescue's Reports,* p. 388.

Mr. *Reddie,* of Edinburgh, whose useful "Researches, Historical and Critical, in Maritime International Law," were published in 1844, cites with approbation the views of Lampredi and Azuni on the point in controversy between these writers and Galiani, and bestows especial praise upon the former of these jurists.

In the Case of the United States, a passage is, it is true, cited from the well-known work of M. *Hautefeuille,* entitled "Les Droits et les Devoirs des Nations Neutres en temps de Guerre Maritime," published in 1858, in which the author affirms that the building or arming in a neutral port of a vessel of war for a belligerent is a violation of the neutral territory and of the sovereignty of the neutral, and that captures made by such a vessel are unlawful. M. Hautefeuille is a writer of great ingenuity and

research, but the foundation of his work is the assumption that the settled and ascertained usage, or, as it has sometimes been called, the positive law, of nations, is to be rejected as erroneous when it appears to conflict with such conclusions as he is able to draw from *à priori* reasoning. His statements of principle are, therefore, to be received with caution, but his statements of fact are generally careful and valuable. It is apparent, however, that in the above-mentioned passage, M. Hautefeuille cannot have intended to condemn the mere construction, to the order of a belligerent, of a vessel of war which is not armed or equipped for war when she leaves the neutral port, since in a subsequent part of the same work he contends that she is not even contraband of war, when sent to sea, unless armed :—

" A l'égard des vaisseaux construits, la question n'a jamais été tranchée par les Traités; peu d'auteurs s'en sont occupés, et ceux qui l'ont fait se sont bornés, comme Azuni, à énoncer une opinion sans entrer dans la discussion. Hubner a suivi cette marche; il déclare contrebande les vaisseaux de guerre construits dans les ports neutres, pour le compte de l'un des belligérants, et faisant route pour ses Etats.

" Je ne puis comprendre qu'un bâtiment, quelles que soient sa grandeur, sa forme, sa destination, soit un objet de contrebande de guerre. Le navire n'est pas propre à la guerre, préparé pour servir exclusivement aux opérations militaires, apte à être employé à ces opérations, immédiatement et sans aucun changement, sans aucune addition. Lorsqu'il est dépourvu des canons, des munitions, des armes et des hommes qui doivent les employer, ce n'est pas une machine de guerre; c'est un véhicule plus ou moins grand, plus ou moins solide, mais ce n'est qu'un véhicule. Pour lui donner les qualités spéciales et exclusives qui déterminent le caractère de contrebande de guerre, il est nécessaire de transporter à bord des canons, des armes, des munitions, en un mot tout l'attirail du combat. C'est alors seulement que le bâtiment devient, non une machine de guerre, mais une machine portant des instruments de guerre et susceptibles de nuire, par cette circonstance seulement, au belligérant. Mais la machine elle-même, mais le véhicule dénué de son armement, ne peut être réputé nuisible. Au reste, il faut convenir que ce commerce est peu fréquent, et la meilleure preuve que je puisse donner de l'innocuité de ce négoce est le silence du droit secondaire à son égard."

After stating that materials for ship-building and for the equipment of ships can under no circumstances be contraband of war, he concludes :—

" *Les bâtiments non armés, construits dans les ports neutres et vendus aux nations engagées dans les hostilités, quelles que soient leur force, la nature de leur construction, sont également objets d'un commerce licite. Ils doivent être régis par la règle générale, qui est la liberté entière du commerce, entre les nations neutres et les deux belligérants.*"—*Hautefeuille*, vol. ii, pp. 144-146.

M. Hautefeuille, therefore, who has been cited by the United States, here goes beyond all preceding writers, and asserts with the utmost clearness that a vessel not actually armed for war is, under all circumstances, an innocent object of lawful commerce, whatever may be her size or force, or the character of her construction, and he adds that the best proof of this is that the law of nations, so far as it rests on international usage and practice, has been wholly silent on the subject.

The Government of the United States has further cited a passage from *Ortolan's " Diplomatie de la Mer."* This passage is not found in any edition of M. Ortolan's excellent work anterior to the Civil War. It expresses, therefore, an opinion recently formed by the writer on a question which he evidently regards as a new one, but it is not, nor indeed does it purport to be, evidence that such an opinion had been held before, much less that it had been sanctioned by the usage and general consent of nations.

Among the jurists of the United States there are no more famous names than those of *Story* and *Wheaton.* The opinion of the former was clearly expressed in the case of the *Santissima Trinidad* (7 Wheaton, p. 283), where he said, " *There is nothing in our laws, or in the law of nations, that forbids our citizens from sending armed vessels,* as well as munitions of war, *to foreign ports for sale.* It is a commercial adventure which no nation is bound to prohibit, and which only exposes the persons engaged in it to the penalty of confiscation." Wheaton, in his excellent *History of the Progress of the Law of Nations* (French edition, Leipsic, 1853, vol. i, p. 376), referring to the controversy between Lampredi and Galiani, writes as follows :—

" Lampredi passe maintenant à l'examen *d'une question oiseuse suscitée par Galiani,* savoir : ' Si le droit des gens conventionnel, qui interdit le commerce avec l'ennemi de marchandises de contrebande, prohibe la vente de ces marchandises dans le territoire neutre.' Galiani répond à cette question par l'affirmative, *et il prétend qu'un vaisseau, par exemple, construit et armé pour la guerre dans un port neutre ne peut y être légalement vendu à une des parties belligérantes.* Lampredi *se donne beaucoup de peines superflues* pour appuyer, par la raison et l'autorité des publicistes précédents, son opinion que le transport seul des marchandises de contrebande à l'ennemi est prohibé, mais que la vente de ces marchandises dans le territoire de l'Etat neutre est parfaitement légale. Il admet qu'il peut y avoir des exemples de nations neutres qui, désirant par prudence éviter des collisions avec les puissances belligérantes, auraient prohibé le commerce des objets de contrebande dans les limites de leur propre territoire; mais il affirme que, pendant la guerre de l'indépendance de l'Amérique du Nord, Venise donnait seule l'exemple d'une telle prohibition de la part d'un Etat neutre. Naples prohiba seulement la construction des vaisseaux de guerre destinés à être vendus, et l'exportation des autres objets de contrebande, tandis que la Toscane permit à ses sujets de continuer leur commerce accoutumé de ces objets, dans les limites de son territoire, et par l'exportation, sauf le droit des Puissances belligérantes de saisir en mer et de confisquer les objets destinés à l'usage des ennemis."

The following extract from the *American Law Review* of January 1871, a periodical which deservedly possesses the highest reputation, shows in what manner this question was last year regarded by accomplished jurists in the United States, and upon what distinctions those jurists considered it necessary to rely, in order to maintain the present claims against Great Britain :—

" A ship, theoretically considered, may or may not be contraband. If on its way to a belligerent port for the purpose of being sold to the belligerent, it will be contraband if it is adapted or readily adaptable for warlike use; equally so, doubtless, if it be adapted for the transportation of troops, or even perhaps of military material. Inasmuch, therefore, as very few vessels are not capable of being fitted

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and used for one or the other of these purposes, it may be laid down generally that ships will pretty surely be condemned as contraband of war. Nor will it help the matter that a contingency may prevent the sale. Thus, where the Captain had orders to sell if he could find a good purchaser, but otherwise to seek freight, the ship was condemned (the Brutus, 5 Rob. Adm. 331, Note and App.). The case of the Meteor, heard before Judge Nelson, in the United States' Circuit Court, may be regarded as furnishing authority for the same doctrine.

"The Neutrality Acts of the United States and Great Britain may possibly have had the effect of clouding the popular apprehension of this subject. But the thread of an unquestioned and unquestionable principle is quite capable of being traced through all the legal argument and diplomatic controversy. With regard to ships, as with regard to all other descriptions of contraband merchandize, no restriction is placed by international law upon trade. The naked right to sell a ship of war to a belligerent is not interfered with. But a neutral port cannot be made the base of hostile operations by either belligerent against the other. It is because the rights to sell a ship of war in a neutral port, or to send it from a neutral port for sale abroad, are so apt to be wrongfully magnified into the actual equipment and despatch of a military expedition from that port, that Neutrality Acts have been passed. Their intent has not been to prohibit sales, but they have been obliged to hamper the right of sale with a multitude of safeguards against the activity and deceit of men who would add to the legitimate business transaction an improper and unjustifiable adjunct. The history of the neutrality legislation shows this. The first Neutrality Act ever known was passed by the United States. The immediate provocation was the equipment by France of privateers, which departed manned and armed from our ports to cruize against Great Britain. Congress, therefore, passed the Neutrality Act of 1794. In 1817 and 1818 this was improved, at the suggestion of the Portuguese Minister, to meet the necessities arising out of the war then waging by Spain and Portugal with their cis-Atlantic colonies. In each of these years Congress carefully and by obvious intent reserved to American citizens the power to sell. A proposed bill took away this power, and was amended before becoming an act by the striking out of all such prohibitive language. Congress simply furnished legal machinery to the Executive, whereby the stretching of the transaction of sale into the dispatch of a military expedition might be prevented. The British Foreign Enlistment Act, modelled upon our own legislation, aimed, by less effective language, to accomplish precisely the same end.*

"Familiar examples of innocent and guilty transactions will occur at once to every American. Of the former, the case of the Meteor is recent and prominent. The libel averred that she was to be sold to Chile, then at war with Spain, with both of which nations we were at peace. Judge Nelson maintained the right of the owners to sell the ship, as she lay at the wharf, unprepared for military service, neither manned nor armed, and having no covert arrangements made for the procuring of either men or arms. Even the Government Counsel acknowledged that, in order to condemn the vessel, it would be necessary directly to overrule the whole course of American jurisprudence on the subject. The right of sale, *bonâ fide*, to a belligerent, unaccompanied by extraneous illicit circumstances has been upheld by our Courts as clearly and consistently as by our legislature. (The Mermaid, Bee, Adm., 69; Moodie *v.* The Alfred, 3 Dall., 307, which is probably the same case under a different name. The Santissima Trinidad, 7 Wheat., 283, a famous and leading case. Also the United States *v.* Quincy, 6 Pet., 445.) The instance of the guilty transactions which will at once occur to all is that of the Anglo-rebel cruizers. It was not because the Messrs. Laird sold a war ship to the Confederates that we have a claim against England for a breach of international law. But it was because collateral arrangements for completing the equipment and armament of the ship so sold, by placing on board officers and crew, guns and provisions, rendered the entire procedure, in fact, the inception of a hostile undertaking from the confines of a neutral country. It is needless to elaborate further a matter which is in a measure digressive. It may be declared as indubitable that the pure unalloyed bargain and sale of a ship; even a ship of war, to a belligerent is legal by the rules of international law; that such a ship is, however, contraband of war, and if captured after sale on her way towards delivery, or before sale on her way toward a market where she is intended to be sold to a belligerent, she will be properly condemned. Neutrality Acts have not been intended to change this state of the law, but only to furnish sufficient means for preventing its abuse. Our original proposition that the doctrine of contraband of war does not operate as a restriction upon trade, upon dealings which are purely commercial, remains correct, even in this matter of war vessels. The neutral is not called upon actively to interfere with commerce, but he is called upon actively to prevent the use of his territory as the base of hostile operations."—*American Law Review*, vol. v, p. 371.

It was not sufficient, according to this view of the law, that the Alabama was a vessel adapted for war, nor that there was reason to believe that she was intended for the Confederate States. These facts alone would not make it the duty of the British Government to prevent her departure. That duty would not arise until there was reasonable ground to believe that the arrangements for despatching her included also arrangements for completing her armament by placing on board her guns and crew; in short, that what was taking place was not merely the despatch of a ship of war constructed for belligerent use from a neutral port, but the despatch from the neutral territory of a military expedition. And to support a charge of negligence against the Government, it would be necessary to prove that the Government either knew all this, or had reasonable care been exercised, would have known it. This, however, is exactly what has not been, and cannot be, proved. The knowledge of these facts was not in the possession, nor within the reach of the Government.

It must be here observed that the decisions of Municipal Tribunals, on the construction of the municipal law of the United States or of England, are not to be cited as authorities for the construction of the law of nations.

The general conclusion to be drawn from the foregoing authorities is, as the British Government believes, fairly stated above, pp. 11, 12.

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* It will be seen from the examination in Annex B that the provisions of the British Foreign Enlistment Act were, on the contrary, more effective than those of the American.

ANNEX (B). Annex (B).

The British and American Foreign Enlistment Acts.

IT is assumed throughout the United States' Case that the American Act of Congress of 1818 is more efficient than the British Act of Parliament of 1819, and a contrast is attempted to be drawn, to the disadvantage of the British Law, between the provisions of the former, as epitomized in the President's Proclamation of Neutrality of October 8, 1870, and the provisions of the latter, as explained in a Summary given at page 111 of the Case. Pages 29, 30.

A very cursory examination will be sufficient to show that this assumption is erroneous.

Mr. Bemis, an American counsel of acknowledged reputation, who cannot be suspected of any partiality in favour of Great Britain, points out no less than ten particulars in which the United States' is inferior to the British Law, as follows:—*

"Some of these points of superiority relate to warlike preparations on land (on which subject English legislation had provided, to some extent, at a much earlier date than our own), and some to preparations by sea, and some again to preparations combining both land and marine operations. Under one or the other of these heads, I can name at least ten important points of superiority in the British statute over our own.

"1. *In the first place,* the British Act is decidedly more comprehensive than the American, in denouncing unneutral enlistments, both in the land and naval service of a foreign Government, by making it penal '*to agree* to enlist,' or 'to *engage or contract* to enlist,' or to '*engage*' or '*attempt to engage another person to enlist,* neither of which initiatory steps of raising foreign levies is forbidden by our Statute. Our Act (section 2) only punishes one who 'enlists or enters himself, or hires or retains another person to enlist,' &c.; thus making a positive and complete enrolment or hiring on neutral soil a prerequisite to the offence.

"The importance of this distinction will be appreciated, when it is remembered that not a Fenian recruit nor a Fenian recruiter has been prosecuted for violating American laws *by recruiting on American soil* during the late Fenian demonstration in the United States, though the *engaging* to enlist, or *the attempting to engage* others to enlist, have probably been as open as the day in all the Northren cities.

"2. *In the second place,* the British Act is more complete than our own, in prohibiting any hiring or retaining of *any person whatsoever,* by way of recruiting, for foreign war-ships transiently sojourning in British neutral waters, without excepting the subjects or citizens *of the same nation as that to which such war-ships belong,* as the American Statute does, in section 2. The effect of the American exception is, that if the United States happens to be a neutral Power, and England and France, for instance, are belligerents towards each other, England can lawfully recruit from among British subjects for her ships of war, transiently stopping in American ports; and France, in like manner, from French subjects under like circumstances.

"3. On the other hand, *in the third place,* the superiority of the British Act over the American is decided, in forbidding British subjects from enlisting or engaging in warlike operations *anywhere whatsoever;* while the prohibition of the United States' law is limited to 'any person *within the territory or jurisdiction of the United States'* (except in reference to fitting out ships abroad to prey upon American commerce, as already noticed in the criticism on the revision of the Act of 1797, and which exception, as by section 4 of the Act of 1818, is altogether abrogated in General Banks's new scheme). It would seem thus that citizens of the United States, under the laws of the United States as they now stand, may freely go abroad to enlist in a foreign service—in fact, may at home, on American soil, agree to enlist in such service (provided they do not take money and '*enter themselves*')—without committing any offence against United States laws (see United States *v.* Kazinski); but that both these descriptions of belligerent undertakings are denounced by the British Statute.

"4. *In the fourth place,* the British Act is greatly superior to our own as a preventive of infractions of neutrality, in authorizing (as by section 5) the detention of any vessel about leaving the British dominions with persons on board 'who have enlisted or engaged to enlist,' &c., in any foreign belligerent service; thus authorizing the stopping of any warlike embarkation for foreign parts, which our laws, as they now stand, do not, unless the number of persons thus collectively embarking brings it under another head, of 'setting on foot a military expedition.' Section 6 of the British Act follows up this preventive provision, by making it penal for any shipmaster to take on board his ship any such recruits, 'enlisted or engaged to enlist' in a foreign belligerent service, under a penalty of £50 per

* "American Neutrality; Its Honourable Past; Its Expedient Future:" by George Bemis. Boston; 1866: pp. 65–81.

Annex (B).

head for each passenger. It further subjects the ship itself to seizure and detention, until the fine incurred as above is paid, or satisfactory security given for its payment.

"These provisions are entirely new in the British Act, and find no exemplar in our own Statutes.

"5. *In the fifth place* (to come to the head of fitting out ships, and maritime neutrality purely), the British Foreign Enlistment Act, as a neutral measure, has the clear superiority over our own in forbidding the fitting out, &c., of any '*transport or store-ship*' for belligerent use—a prohibition never contained in the American Statute, and which would have materially narrowed the right of engaging in the carrying trade of European wars (whether by chartering or selling vessels to the belligerents), which our Government so strenuously contended for at the period of the Crimean War, under the administration of President Pierce.

"6. *In the sixth place*, the British Statute contains those much-belaboured words, 'equip, furnish, fit out *or* arm;' while our own only denounces 'the fitting out *and* arming' a ship of war for belligerent uses—a distinction between '*or*' and '*and*' which saved us from having Laird's iron-clads let loose against us in September, 1863.

"7. *Seventhly*, the British Foreign Enlistment Act is more comprehensive than our own, in using after the clauses 'equip,' &c., 'or attempt to equip,' &c., the phraseology 'with intent, *or in order*, that such ship be employed,' &c. Our Statute stops short with '*with intent*,' while the British, by adding '*in order that*,' helps to simplify a troublesome question of whose the intent must be—whether the equipper's, or the belligerent State's for whose use the vessel is equipping.

"8. *Eighthly*, the British Statute has a wider scope than the American, and so seems more effectively neutral, in using after the words 'colony, province,' &c., the terms, '*or of any persons exercising, or assuming to exercise, any powers of government*,' &c. The government of Jefferson Davis and his associates, for example, both in the 'Alexandra' and the 'Pampero' proceedings, was set forth under these terms of the Foreign Enlistment Act.

"9. *Ninthly*, that the British Statute is more sweeping and more thoroughly neutral than our own, in enacting various prohibitions against augmenting the armament of foreign ships of war which come into port already armed, but which have occasion to refit or add to their warlike equipment. By the British Act (section 8), no foreign ship of war *at all*, whether belonging to a power *at peace* or at war, is allowed to add to or vary its warlike armament in a British port; while, by our own Statute (section 5), the modified prohibition against adding to the armament of such a ship of war is only levelled against a ship of a *belligerent* Power. That is, the American Statute does not pretend to interfere at all with increasing the number of guns, &c., of a foreign ship of war at a time when the Government to which the ship belongs *is at peace*, but only prohibits such augmentation when the ship is *the representative of a belligerent Power*. The British Act, on the other hand directs its prohibition equally against such warlike equipment in time of peace as well as in time of war.*

"10. *In the tenth and last place*, the British Statute is more severe in its penalties throughout than the American."

It is true that the American Act contains two clauses not included in the British Act of 1819, clauses 10 and 11, commonly known as the "bonding clauses."† With regard to these, Mr. Bemis remarks:—

"To my own appreciation both of these 'bonding' clauses, as they are called, had most of their neutral virtue taken out of them, when Congress made them applicable. (1.) To 'vessels belonging wholly or in part to *citizens of the United States*,' thereby leaving *foreigners* at liberty to clear unneutrally armed ships (see project of the Act, Ann. Con. 1816-17, p. 477, sec. 1); (2) When they limited the bond so as only to prevent '*such owners*' from cruizing or committing hostilities, instead of making the bond guard against belligerent employment of the vessel by '*any person to whom they* [such owners] *may sell or pretend to sell such vessel*.' (Ann. Cong. 1816-17, p. 478, sec. 2); and (3) by requiring that any vessel to be subject to detention, must have on board '*a cargo principally consisting of arms and munitions of war*,' thus letting go at large a vessel armed to the teeth,' and 'manifestly built for warlike purposes,' provided she adopts the precaution of taking *no such cargo* with her, and is *owned by foreigners*."

Great stress is laid in the Case of the United States on the 8th section of the Act of Congress:—"The Tribunal of Arbitration will also observe," it states, "that the most important section of the American Act is omitted in the British Act, namely, *the power conferred by the 8th section on the Executive to take possession of and detain a ship without judicial process and to use the military and naval forces of the Government, if necessary*." This implies that the Executive is empowered to detain any ship; but on turning to the Act itself it will be seen that this is by no means the case. The 8th section provides that "in every case in which a vessel shall be fitted out *and armed*, or attempted to be fitted out *and armed*, or in which the force of any vessel of war, cruizer, or other *armed* vessel, shall be increased or augmented, or in which any military expedition or enterprize shall be begun or set on foot, contrary to the provisions and prohibitions of this Act; and in every case of the capture of a ship or vessel within the jurisdiction or protection of the United States as before defined, and in every case in which any process issuing out of any Court of the United States shall be disobeyed or resisted by any person or persons having the custody of any vessel of war, cruizer, or other *armed* vessel of any foreign Prince or State, or of any Colony, district, or people, or of any subjects or citizens of any foreign Prince or State, or of any Colony, district, or people, in every case it shall be lawful for the President of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States, or or the militia thereof, for the purpose of taking possession of and detaining any such ship or vessel, with her prize or prizes, if any, in order to the execution of the prohibitions and penalties of this Act, and to the restoring the prize or prizes in the cases in which restora-

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* It may be doubted whether the interpretation, placed by Mr. Bemis on the British statute of 1819, under this ninth "head," is correct. In all other respects, his observations are accurate and well-founded.

† For the Acts, see Appendix, vol. iii, pp. 29–41.

tion shall have been adjudged, and also for the purpose of preventing the carrying on any such expedition or enterprise from the territories or jurisdiction of the United States against the territories or dominions of any foreign Prince or State, or of any Colony, district, or people, with whom the United States are at peace."

Neither the Alabama nor Florida, nor any of the other vessels complained of, was fitted out and armed, or attempted to be fitted out and armed, within British jurisdiction; and, if there had been a similar provision in the British Act of Parliament, it would not, therefore, have been applicable. The section, which is taken from the Act of 1794 (section 7), was evidently intended to enable the President to repress the arming of French privateers in American ports and their violations of neutrality in American waters, and did not contemplate any interference with *unarmed* vessels except for the purpose of restoring prizes brought into the ports of the United States after having been captured within their jurisdiction.

The American law was indeed purposely restricted in its operation. When the Act of 1817 was introduced into Congress, it was entitled "A Bill to prevent Citizens of the United States from Selling Vessels of War to the Citizens or Subjects of any Foreign Power, and more effectually to prevent the Arming and Equipping Vessels of War in the Ports of the United States, intended to be used against nations in amity with the United States," and the first section would have prohibited the fitting out and arming by American citizens of "any private ship or vessel of war, to sell the said vessel, or contract for the sale of the said vessel to be delivered in the United States, or elsewhere, to the purchaser," with intent to cruize, &c.; but this section was struck out by the Senate, and the title of the Bill changed. The Act, as it was passed, contained no such prohibition.

Notwithstanding the fact that the British Act of 1819 is of greater stringency than the American Act, Lord Russell was willing, during the civil war, to consider what amendments could be introduced into it if the United States' Government had given any encouragement to a suggestion he made for a joint revision of the two laws.

On the 20th of November, 1862, Mr. Adams solicited "a more effective prevention of any repetition" of occurrences like those of which he complained.* Lord Russell replied December 19, 1862:—†

"As regards your demand for a more effective prevention, for the future, of the fitting out of such vessels in British ports, I have the honour to inform you that Her Majesty's Government, after consultation with the Law Officers of the Crown, are of opinion that certain amendments might be introduced into the Foreign Enlistment Act, which, if sanctioned by Parliament, would have the effect of giving greater power to the Executive to prevent the construction, in British ports, of ships destined for the use of belligerents. But Her Majesty's Government consider that, before submitting any proposals of that sort to Parliament, it would be desirable that they should previously communicate with the Government of the United States, and ascertain whether that Government is willing to make similar alterations in its own Foreign Enlistment Act, and that the amendments, like the original statute, should, as it were, proceed *pari passu* in both countries.

"I shall accordingly be ready to confer at any time with you, and to listen to any suggestions which you may have to make by which the British Foreign Enlistment Act and the corresponding statute of the United States may be made more efficient for their purpose."

Mr. Adams did not give any answer to this in writing, but, on the 14th of February, 1863, Lord Russell informed Lord Lyons:—

"I had a conversation a few days ago with Mr. Adams on the subject of the 'Alabama.'

"It did not appear that his Government desired to carry on the controversy on this subject from Washington; they rather left the conduct of the argument to Mr. Adams.

"On a second point, however, namely, whether the law with respect to equipment of vessels for hostile purposes might be improved, Mr. Adams said that his Government were ready to listen to any propositions Her Majesty's Government had to make, but they did not see how their own law on this subject could be improved.

"I said that the Cabinet had come to a similar conclusion; so that no further proceedings need be taken at present on this subject."‡

On the 27th of March Lord Russell told Lord Lyons that the subject had been again mentioned. "With respect to the law itself, Mr. Adams said, either it was sufficient for the purpose of neutrality, and then let the British Government enforce it; or it was insufficient, and then let the British Government apply to Parliament to amend it. I said that the Cabinet were of opinion that the law was sufficient; but that legal evidence could not always be procured."§

The revision of the British Act of 1818, upon the recommendation of the Neutrality Laws Commission, has already been noticed in Part II. An attempt was made in 1866 to revise the American Act, but in a very different spirit.

On the 11th of July, 1866, a week after the Fenian raid on Canada, a resolution was passed in the House of Representatives instructing the Committee on Foreign Affairs to inquire into the expediency of reporting a Bill for the repeal of the Act of 1818; and, in compliance with this instruction, the Committee presented a Report on the 25th of July, accompanied by a Bill which was accepted and passed on the following day by an unanimous vote.

The Report and Bill are given in the Appendix, vol. v, p. 343.

The following extracts from the Report will show the views of maritime neutrality entertained by the Committee, and endorsed by the House:—

"The American statute is not demanded by international or natural law. According to these systems neutrality is impartiality. A State, in virtue of its sovereignty, has an inherent and inde-

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* Appendix to United States' Case, vol. iii, p. 73.

† Ibid., p. 92.

‡ See vol. i, p. 668. The correspondence will be found also in the Appendix to the British Case, vol. iv, No. 1, p. 48.

§ Appendix to British Case, vol. iv, No. 2, p. 2.

Annex (B).

feasible right to remain neutral as between other States at war. This neutrality implies, on one part, impartiality; on the other, inviolability. The State cannot inflict, and is not bound to suffer injury. It is a temporary condition, incident to the situation, and not necessarily permanent. An attempt to impose upon a people permanent neutrality, especially if that word is interpreted to mean, as in our legislation it does, an estrangement, abscission, and isolation of the State from other nations, is opposed to the true principles of public morality and law. To make such a system permanent is impracticable. It can be justified only by a regard to the temporary condition of States by which it is enacted. The highest interests of civilization demand that the liberties and rights of neutrals should be extended, and the privileges and powers of States at war diminished. Upon the recognition of this principle depends the progress of nations, the independence of States, the liberties of the people. To restrict the rights of neutrals, and enlarge the power of belligerents, is to reject the teachings of Christianity and the improvements of civilization. and to return to the doctrines of uncivilized nations and the practices of barbaric peoples.

"In reviewing the statute of 1818 we cannot escape the conclusion that it is founded upon an opposite and unsound philosophy; that it disregards the inalienable rights of the people of all nations; that it was imposed upon the country by considerations affecting exclusively the political interests of other nations; that it criminally restrains the rights of nations at peace for the benefit of those at war; that it was intended to perpetuate the supremacy of favoured nations on the sea. It properly belongs to another age, and is not of us or for us.

"It was in deference to the conditions then imposed that American legislators thought it expedient to divest this country of rights enjoyed by others, indispensable to the development of the strength of Republican institutions and the American States, and to inflict upon their people the irreparable injury of depriving them of privileges necessary to their private prosperity and the preservation of the liberties of their race. It is incredible that it should have been thought necessary permanently to suppress, as crimes on the part of our citizens, transactions which are not punished as crimes elsewhere, for the benefit of nations inimical if not hostile to us, and against States struggling for independence and liberty in emulation of our own example.

"No; these concessions to the peace of the world were made for the time when they were enacted. It was an opportune and patriotic policy. The preservation of the Republic was the first duty of our fathers, as it is now ours. It is destined, if sustained, to be the grand disturber of the right divine of kings, the model of struggling nations, the last hope of the independence of States and of rational liberty.

"To the example and prospect of our fathers we still adhere. But if the time has come for which they waited and worked, or whenever it shall come, in which the rights of the country can be asserted, its interests protected without departure from the established policy of our Government, which we endorse without hesitation, and to which we adhere without reservation, it is our opinion that the opportunity should not be lost. And we therefore recommend, as incident to this duty and this day, a thorough revision of the statutes affecting our national relations with other Governments, and the enactment of such laws as will limit its prohibitions and restrictions to those imposed by the laws of nations, the stipulation of Treaties, the reciprocal legislation of other Governments, the freedom of commerce, the independence of States, the interests of civilization, and that will curb the power of nations at war, and strengthen and extend the rights of those at peace."

"Ships are articles of commerce; they are in no liberal or just sense contraband of war, nor are the materials of which they are made. The recent improvements in naval architecture are such as to diminish the distinctions between merchant vessels and ships of war, and to facilitate the adaptation of one to the purposes of the other. A strong-built, swift-sailing merchant-vessel or steamer could be made with a single gun an effective war-vessel. To prohibit our citizens from building such vessels or selling materials for their construction at a time when all nations except our own are at war, because they may be employed for hostile purposes by foreign subjects, or to demand bonds in double the amount of vessel, cargo, and armament, and to require officers of the customs to seize and detain them whenever cargo, crew, or 'other circumstances' shall render probable a suspicion that they are to be so used, and where American citizens are part owners only, is substantially to deprive them of their rights to engage in the construction of vessels, or to furnish materials therefor. Considering the limitless capacity of the country in this respect, it is a privilege that ought not to be surrendered except upon grounds of absolute necessity and justice."—(Appendix to British Case, vol. v, pp. 347, 348.)

The principal alterations proposed in that Bill were to make it clear that 'fitting out' a vessel for a belligerent was not prohibited, and that there must be 'fitting out and arming;' to repeal the clauses known as the 'bonding clauses;' to insert a declaration that the Act should not 'prohibit citizens of the United States from selling vessels, ships, or steamers built within the limits thereof, or materials or munitions of war, the growth or product of the same to inhabitants of other countries not at war with the United States;' and to repeal the clauses making it an offence to begin or set on foot, or provide or prepare the means for any military expedition or enterprise to be carried on from the limits of the United States against any foreign country at peace with the United States (the clause under which the Fenian leaders were prosecuted), and which authorize the President to employ the military or naval forces of the Republic to prevent such expeditions.

The Bill did not become law, as the Senate refused to pass it without consideration, and referred it to the Senate Committee of Foreign Affairs; and Congress adjourned without the Committee having made a Report.

The immediate effect of the Bill, if passed, would have been to facilitate the despatch from the ports of the United States of vessels to be employed by Chili and Peru in the war they were then carrying on against Spain.

ANNEX (C).

Position and Duties of the Law Officers of the Crown in England.

AS it has been necessary to refer from time to time to the opinions given by the British Law Officers, it may be convenient to explain more precisely than has been hitherto done what is their position as the legal advisers of Her Majesty's Government.

In England there is no Ministry of Justice, or similar Department of State, to which recourse can be had by other Departments when matters are brought before them on which a decision involving questions of law is required.

This want is supplied by the appointment of three Law Officers, as they are called. Two of these—the Attorney-General and Solicitor-General—are barristers or advocates, with seats in the House of Commons, who have been selected by the Ministry of the day, and who leave office when that Administration is changed. They occupy, therefore, a double position—as the confidential advisers of the Government on legal subjects, and as the natural defenders and expounders in Parliament of the proceedings which the Government may adopt upon their recommendation.

The third Law Officer—the Queen's Advocate—is a permanent official, and does not leave office on the resignation of the Ministry by whom he was appointed. It has been usual to select for this office a barrister who has a special knowledge of civil and international law; and he is, in consequence, more particularly the legal adviser of the Foreign Office. Like, however, the Attorney-General and Solicitor-General, he has private practice as an advocate, and has generally numerous duties devolving upon him in connection with ecclesiastical and civil jurisdiction.

The Law Officers have no bureau or office set apart for their use, and no regular staff of assistants or archives. As the Queen's Advocate therefore frequently possesses, from the permanent character of his appointment, a knowledge of official precedents with which the other Law Officers may not be familiar, he generally acts as their draughtsman in the preparation of Reports. Up to the date of Sir John Harding's retirement, the Queen Advocate's name stood first in the patent or letter of appointment under which the Law Officers act; and he had, therefore, precedence over the other two. The result was, that papers on which an opinion was requested were sent to him first, and, when he had perused and written his Minute upon them, were passed on to the Attorney-General, and afterwards by him to the Solicitor-General. In all cases of importance, and particularly when time is pressing, it is usual for the three Law Officers to meet and confer together, after they have all read the papers, the appointment for the purpose being usually made by the senior in rank of the three.

Having thus shown the position occupied by the Law Officers towards each other and towards the Government, it remains to explain the manner in which papers are referred to them, taking as an example questions arising under the Foreign Enlistment Act of 1819.

By the 5th, 6th, and 7th clauses of that Act the officers of Customs and Excise were empowered to seize and detain vessels in case of contravention of the Act, in the same manner as vessels were seized and detained under the laws for the protection of the revenues of Customs and Excise, or the laws of trade and navigation.

The duties of the officers of Customs being primarily for the collection and protection of the revenue, the Collectors or other head officers of the Customs at the ports are under the authority of the Lords Commissioners of Her Majesty's Treasury, of which Department the Board of Cnstoms in London is a branch office. When, therefore, the Consul of a foreign belligerent Power has a complaint to make at a port that the Foreign Enlistment Act is being contravened to the prejudice of his country, he proceeds to the Collector of Customs, and lays before him the evidence he may have to adduce in support of the charge. This evidence is generally in the form of written statements, or affidavits, drawn up in proper shape, and sworn to, or solemnly declared to be true, before a magistrate. Copies or duplicates of these affidavits will then be forwarded by the Customs Collector to the Board of Customs in London, and by the Consul to the Diplomatic Representative of his country.

In London, the Board of Customs will transmit the affidavits to the Treasury, and probably also take the opinion of their Departmental legal adviser upon them. Some little time is consumed in the mere transmission of the papers, the Custom-house being situated on the Thames below London Bridge, and the Treasury in Whitehall, near the Houses of Parliament, the distance between the two being about three miles.

The Treasury will next send the papers to the Foreign Office. and ask instructions. In the meanwhile the Foreign Minister will have received the affidavits and despatch inclosing them from the

Annex (C).

Consul, and will likewise bring or send them to the Foreign Office. The Secretary of State for Foreign Affairs immediately directs them to be transmitted to the Law Officers for their opinion. This is done by writing a letter addressed to the three Law Officers, and requesting their opinion upon the papers at their earliest convenience. This letter is taken to the Senior Law Officer, either to his chambers or to the Court in which he may be, or sometimes to his private residence:—he, when he has read and considered the papers, either sends them on to his colleague next in order of precedence (by whom, in that case, they are transmitted to the third), or makes an appointment for a meeting to deliberate on the subject, in the meantime retaining the papers in his own hands. When all the Law Officers have had the opportunity of sufficiently considering the papers, they consider, in consultation together, the draft Report (prepared usually, as previously stated, by the Queen's Advocate), and a letter is drawn up, fair opied, and signed by them, containing their opinion. This letter is sent to the Foreign Office, and the Secretary of State is guided by it in the reply which he gives to the Treasury and Foreign Minister.

NORTH AMERICA. No. 5 (1872).

CORRESPONDENCE

RESPECTING THE

PRESENTATION OF THE COUNTER-CASES

OF

GREAT BRITAIN AND OF THE UNITED STATES,

WITH THE

DECLARATIONS MADE BY THE AGENTS OF THE RESPECTIVE GOVERNMENTS.

Presented to both Houses of Parliament by Command of Her Majesty.
1872.

LONDON:
PRINTED BY HARRISON AND SONS.

[C.—528.] *Price* 1½*d.*

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Correspondence respecting the Presentation of the Counter-Cases of Great Britain and of the United States, with the Declarations made by the Agents of the respective Governments.

No. 1.

Earl Granville to Lord Tenterden.

My Lord, *Foreign Office, April* 9, 1872.

I HAVE to instruct you to proceed to Geneva and to present to the Secretary of the Tribunal of Arbitration on the 15th instant, for delivery to the Arbitrators and to the Agent of the United States, in accordance with the IVth Article of the Treaty of Washington and the Protocol agreed upon at the meeting held on the 15th of December,* the Counter Case of Her Majesty's Government, with the additional documents, correspondence, and evidence in reply to the Case, documents, correspondence, and evidence presented to the Tribunal on the part of the Government of the United States at that meeting.

I have also to instruct you to address to each of the Arbitrators, in your capacity as Her Majesty's Agent, a note in the terms of the inclosed draft,† for delivery to them by the Secretary with the Counter-Case. You will forward a copy of this note to the United States' Agent in a letter, of which the draft is likewise inclosed.‡

I am, &c.
(Signed) GRANVILLE.

No. 2.

Lord Tenterden to Earl Granville.—(Received April 16.)

My Lord, *Geneva, April* 15, 1872.

I HAVE the honour to report that, in compliance with the instructions contained in your Lordship's despatch of the 9th instant, I have this day presented to the Secretary of the Tribunal of Arbitration at Geneva, for delivery to the Arbitrators and to the Agent of the United States, in compliance with the IVth Article of the Treaty of Washington and the Protocol agreed upon at the meeting held on the 15th of December, the Counter-Case of Her Majesty's Government with the additional documents, correspondence, and evidence in reply to the Case, documents, correspondence and evidence presented to the Tribunal on the part of the Government of the United States at that meeting.

Copies of my letter to the Secretary, forwarding the Counter-Case and Appendix volumes, and of his letter acknowledging their receipt are inclosed.

I have, &c.
(Signed) TENTERDEN.

Inclosure 1 in No. 2.

Lord Tenterden to M. Favrot.

Sir, *Geneva, April* 15, 1872.

IN compliance with the IVth Article of the Treaty of Washington and the Protocol agreed upon at the meeting of the Tribunal of Arbitration held on the 15th of December,

* See No. 5. † Inclosure 1 in No. 4. ‡ Inclosure 4 in No. 4.

I transmit to you, for delivery to each of the Arbitrators and to the Agent of the U States, the accompanying notes presenting copies in duplicate of the printed Counter-Case of the Government of Her Britannic Majesty, accompanied by additional documents, official correspondence, and evidence in reply to the Case, documents, correspondence and evidence presented on the part of the Government of the United States to the Tribunal at that meeting.

I am, &c.
(Signed) TENTERDEN.

Inclosure 2 in No. 2.

*Lord Tenterden to Count Sclopis.**

Geneva, April 15, 1872.

THE Undersigned, Agent of Her Britannic Majesty, appointed to attend the Tribunal of Arbitration convened at Geneva under the provisions of the Treaty concluded at Washington, May 8, 1871, between Her Britannic Majesty and the United States, has the honour, in accordance with the IVth Article of the Treaty and the Protocol agreed upon at the meeting held on the 15th of December, to deliver herewith in duplicate to Count Sclopis, the Arbitrator named by His Majesty the King of Italy, the printed Counter-Case of the Government of Her Britannic Majesty, accompanied by additional documents, official correspondence, and evidence in reply to the Case, documents, correspondence and evidence presented on the part of the United States to the Tribunal at that meeting.

The Undersigned, &c. (Signed) TENTERDEN.

Inclosure 3 in No. 2.

M. Favrot to Lord Tenterden.

My Lord, *Hôtel de Ville, Geneva, April* 15, 1872.

I HAVE the honour to acknowledge the receipt of your letter of the 15th of April, 1872, transmitting to me for delivery to each of the Arbitrators, and to the Agent of the United States, notes presenting copies in duplicate of the printed Counter-Case of the Government of Her Britannic Majesty, accompanied by additional documents, official correspondence, and evidence, in reply to the Case, documents, correspondence, and evidence presented on the part of the Government of the United States to the Tribunal of Arbitration, in compliance with the IVth Article of the Treaty of Washington, and the Protocol agreed upon at the meeting of that Tribunal held on the 15th of December, 1871.

I shall lose no time in forwarding the Counter-Case, and accompanying three volumes of Appendix (in duplicate), to their respective addresses.

I remain, &c.
(Signed) ALEX. FAVROT.

No. 3.

Lord Tenterden to Earl Granville.—(Received April 16.)

My Lord, *Geneva, April* 15, 1872.

I HAVE the honour to inclose a copy of a letter delivered to me by the Agent of the United States this day, through the Secretary to the Tribunal of Arbitration, forwarding to me copies in duplicate of the United States' Counter-Case and accompanying documents.

A similar letter has been addressed by him to the Lord Chief Justice.

I have, &c.
(Signed) TENTERDEN.

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* Similar notes were addressed to Baron Itajuba, Staempfli, the Lord Chief Justice, Mr. C. F. Adams, and Mr. Bancroft Davis.

Inclosure in No. 3.

Mr. Bancroft Davis to Lord Tenterden.

Geneva, April 15, 1872,

THE Undersigned, Agent of the United States, appointed to attend the Tribunal of Arbitration, convened at Geneva under the provisions of a Treaty concluded at Washington, May 8, 1871, between the United States and Her Britannic Majesty, has the honour, in compliance with the provisions of Article IV of the Treaty, to deliver herewith, in duplicate, to Lord Tenterden, the Counter-Case of the United States, and additional documents, correspondence, and evidence, in reply to the Case, documents, correspondence and evidence presented to the Tribunal of Arbitration by the Government of Her Britanic Majesty.

The Undersigned, &c. (Signed) J. C. BANCROFT DAVIS.

Inclosures.

1. Counter Case of the United States, and additional documents, correspondence, and evidence.
2. Documents, correspondence, and evidence, entitled "Alabama Claims Documents," accompanying the Counter-Case of the United States.
3. Documents and evidence, entitled "Revised List of Claims filed with the Department of State, growing out of the acts committed by the several vessels which have given rise to the Claims generically known as the Alabama Claims."
4. Documents and evidence entitled "Cuban Correspondence, 1866-71."
5. Copies and drawings of the "Alabama," captured at Richmond by the forces of the United States.

No. 4.

Lord Tenterden to Earl Granville.—(*Received April* 16.)

My Lord, *Geneva, April* 15, 1872.

I HAVE the honour to report that, in accordance with the instructions which I have received from your Lordship, I addressed a note, of which a copy is inclosed, to each of the Arbitrators appointed under the Ist Article of the Treaty of Washington, and requested the Secretary to cause it to be forwarded to them, together with the Counter-Case.

Copies of my letter to the Secretary and of his acknowledgment of it are transmitted herewith.

I also addressed a letter to the Agent of the United States in the terms of the draft with which your Lordship has furnished me, inclosing a copy of the note to the Arbitrators, and have received from him a reply in which he transmits to me a copy of a note which he has written to them in rejoinder to my note.

Copies of this correspondence are also inclosed.

I have telegraphed to your Lordship the text of the note of the United States' Agent, and await your instructions. In the meanwhile I have received it without remark.

I have, &c

(Signed) TENTERDEN.

Inclosure 1 in No. 4.

*Lord Tenterden to Count Sclopis.**

Geneva, April 15, 1872.

THE Undersigned, Agent of Her Britannic Majesty, is instructed by Her Majesty's Government to state to Count Sclopis, that, while presenting their Counter-Case, under the special reservation hereinafter mentioned, in reply to the Case which has been presented on the part of the United States, they find it incumbent upon them to inform the Arbitrators that a misunderstanding has unfortunately arisen between Great Britain and the United States as to the nature and extent of the claims referred to the Tribunal by the Ist Article of the Treaty of Washington.

* Similar notes were addressed to Baron Itajuba, M. Staempfli, the Lord Chief Justice, and Mr. C. F. Adams.

This misunderstanding relates to the claims for indirect losses put forward by the Government of the United States, under the several heads of—(1.) "The losses in the transfer of the American commercial marine to the British flag." (2.) "The enhanced payments of insurance." (3.) "The prolongation of the war, and the addition of a large sum to the cost of the war and the suppression of the rebellion." Which claims for indirect losses are not admitted by Her Majesty's Government to be within either the scope or the intention of the reference to arbitration.

Her Majesty's Government have been for some time past, and still are, in correspondence with the Government of the United States upon this subject; and, as this correspondence has not been brought to a final issue, Her Majesty's Government being desirous if possible) of proceeding with the reference as to the claims for direct losses, have thought) it proper in the meantime to present to the Arbitrators their Counter-Case (which is strictly confined to the claims for direct losses), in the hope that, before the time limited by the Vth Article of the Treaty, this unfortunate misunderstanding may be removed.

But Her Majesty's Government desire to intimate, and do hereby expressly and formally intimate and notify to the Arbitrators, that this Counter-Case is presented without prejudice to the position assumed by Her Majesty's Government in the correspondence to which reference has been made, and under the express reservation of all Her Majesty's rights, in the event of a difference continuing to exist between the High Contracting Parties as to the scope and intention of the reference to arbitration.

If circumstances should render it necessary for Her Majesty to cause any further communication to be addressed to the Arbitrators upon this subject, Her Majesty will direct that communication to be made at or before the time limited by the Vth Article of the Treaty.

The Undersigned, &c. (Signed) TENTERDEN.

Inclosure 2 in No. 4.

Lord Tenterden to M. Favrot.

Sir, *Geneva, April* 15, 1872.

I TRANSMIT to you herewith a separate note which, by direction of Her Majesty's Government, I have addressed to each of the Arbitrators appointed under the Ist Article of the Treaty of Washington, and which I have to request you to be good enough to forward to them, together with the Counter-Case which I have already delivered to you.

I am, &c.
(Signed) TENTERDEN.

Inclosure 3 in No. 4.

M. Favrot to Lord Tenterden.

My Lord, *Hôtel de Ville, Geneva, April* 15, 1872.

I HAVE the honour to acknowledge the receipt of your note of the 15th of April, inclosing a separate note which, by direction of Her Britannic Majesty's Government you have addressed to each Arbitrator appointed under the Ist Article of the Treaty of Washington, and which you request me to forward to them, together with the note presenting the Counter-Case, which you have already delivered to me.

I shall have much pleasure in doing so, and I avail myself, &c.

(Signed) ALEX. FAVROT.

Inclosure 4 in No. 4.

Lord Tenterden to Mr. Bancroft Davis.

Sir, *Geneva, April* 15, 1872.

I HAVE the honour to transmit to you a copy of a note which, by direction of Her Britannic Majesty's Government, I have addressed to each of the Arbitrators appointed under the Ist Article of the Treaty of Washington, and which will be delivered to them, together with the Counter-Case, which I have presented.

I have, &c.
(Signed) TENTERDEN.

Inclosure 5 in No. 4.

Mr. Bancroft Davis to Lord Tenterden.

My Lord, *Geneva, April* 15, 1872.

I HAVE the honour to acknowledge the receipt of your note of this date, transmitting to me a copy of a note which, by direction of Her Britannic Majesty's Government you have addressed to each of the Arbitrators appointed under the Ist Article of the Treaty of Washington, and which has been delivered to them, together with the Counter-Case, which you have presented.

I have now the honour to transmit to you a copy of a letter to the Arbitrators, which has been made necessary by your Lordship's note to them, and have, &c.

(Signed) J. C. BANCROFT DAVIS.

Inclosure 6 in No. 4.

Copy of a Note addressed to the Arbitrators by Mr. Bancroft Davis, Agent of the United States.

Geneva, April 15, 1872.

THE Undersigned, Agent of the United States, has the honour to inform the Arbitrators appointed under the provisions of the Treaty concluded between the United States and Her Majesty on the 8th of May, 1871, that he has received from Lord Tenterden, the Agent of Her Majesty, a copy of a note this day addressed by his Lordship to each of the Arbitrators, in which it is averred that some of the claims put forth by the United States in their Case are not within the scope and intention of this reference.

The instructions to the Undersigned from his Government not having contemplated the probability of such a course on the part of Her Majesty's Government, the Undersigned is compelled in reply to reserve to his Government its full right hereafter to vindicate before the Tribunal the authority which it understands the Tribunal acquired under the Treaty in this respect.

The Undersigned, &c. (Signed) J. C. BANCROFT DAVIS.

No. 5 (referred to in No. 1).

Protocol.

RECORD of the proceedings of the Tribunal of Arbitration under the provisions of the Treaty between Her Britannic Majesty and the United States of America, concluded on the 8th day of May, A.D. 1871, at the first Conference held at Geneva, in Switzerland, on the fifteenth day of December, in the year of our Lord One thousand eight hundred and seventy-one.

The Conference was convened at the Hôtel de Ville at Geneva in compliance with notices from Lord Tenterden, Agent of Her Britannic Majesty, and Mr. J. C. Bancroft Davis, Agent of the United States, in the form following:—

"The Undersigned, having been appointed Agent of Her Britannic Majesty to attend the Tribunal of Arbitration about to be convened at Geneva under the provisions of the Treaty between Great Britain and the United States of the 8th of May last, has the honour to acquaint Count Sclopis that it is proposed by the Government of Her Britannic Majesty that the first meeting of the Tribunal should be held at Geneva, if not inconvenient to the Arbitrators, on the 15th instant.

(Signed) "TENTERDEN."

The Arbitrators who were present, and produced their respective powers, which were examined, and found to be in good and due form, were:

The Right Honourable Sir Alexander Cockburn, the Lord Chief Justice of England, the Arbitrator named by Her Britannic Majesty; Charles Francis Adams, Esq., the Arbitrator named by the President of the United States of America; his Excellency Count Sclopis, the Arbitrator named by His Majesty the King of Italy; M. Jacques Staempfli, the Arbitrator named by the President of the Swiss Confederation; and his Excellency the Baron d'Itajuba, the Arbitrator named by His Majesty the Emperor of Brazil.

The Right Honourable Lord Tenterden attended the Conference as the Agent of Her

Britannic Majesty; J. C. Bancroft Davis, Esq., attended as the Agent of the United States.

Mr. Adams proposed that Count Sclopis, as being the Arbitrator named by the Power first mentioned in the Treaty after Great Britain and the United States, should preside over the labours of the Tribunal.

The proposal was seconded by Sir Alexander Cockburn, and was unanimously adopted; and Count Sclopis, having expressed his acknowledgments, assumed the Presidency.

On the proposal of Count Sclopis the Tribunal of Arbitration requested the Arbitrator named by the President of the Swiss Confederation to recommend some suitable person to act as the Secretary of the Tribunal.

The Swiss Arbitrator named M. Alexandre Favrot as a suitable person, and M. Alexandre Favrot was thereupon appointed by the Tribunal of Arbitration to act as its Secretary during the Conferences, and entered upon the duties of that office.

Lord Tenterden then presented in duplicate to each of the Arbitrators, and to the Agent of the United States, the printed Case of the Government of Her Britannic Majesty, accompanied by the documents, official correspondence, and other evidence on which it relies.

Mr. J. C. Bancroft Davis, in like manner, presented to each of the Arbitrators, and to the Agent of Great Britain, the printed Case of the United States, accompanied by the documents, official correspondence, and other evidence on which they rely.

The Tribunal of Arbitration thereupon directed that the respective Counter-Cases, additional documents, correspondence, and evidence called for or permitted by the IVth Article of the Treaty should be delivered to the Secretary of the Tribunal at the Hall of the Conference, in the Hôtel de Ville at Geneva, for the Arbitrators and for the respective Agents, on or before the 15th day of April next.

The Arbitrators further directed that either party desiring, under the provisions of the IVth Article of the Treaty, to extend the time for delivering the Counter-Cases, documents, correspondence, and evidence, shall make application to them through the Secretary, and that the Secretary shall thereupon convene a Conference at Geneva, at an early day, to suit the convenience of the respective Arbitrators, and that due notice thereof shall be given to the Agent of the other party.

The Tribunal of Arbitration proceeded to direct that applications by either party, under the provisions of the IVth Article of the Treaty, for copies of reports or documents specified or alluded to, and in the exclusive possession of the other party, shall be made to the Agent of the other party, with the same force and effect as if made to the Tribunal of Arbitration.

The Tribunal of Arbitration further directed that, should either party, in accordance with the provisions of the IVth Article, call upon the other party, through the Arbitration, to produce the originals or certified copies of any papers adduced as evidence, such application should be made by written notice thereof to the Secretary, within thirty days after the delivery of the Cases, and that thereupon the Secretary shall transmit to the Agent of the other party a copy of the request, and that it shall be the duty of the Agent of the other party to deliver said originals or certified copies to the Secretary as soon as may be practically convenient.

The Arbitrators also agreed that, for the purpose of deciding any question arising upon the foregoing Rules, the presence of three of their number shall be sufficient.

The Conference was adjourned to the following day, 16th of December, at 3 o'clock P.M.

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

(Signed) ALEXANDRE FAVROT, *Secrétaire.*

NORTH AMERICA. No. 5 (1872).

CORRESPONDENCE respecting the Presentation of the Counter-Cases of Great Britain and of the United States, with the Declarations made by the Agents of the respective Governments.

Presented to both Houses of Parliament by Command of Her Majesty. 1872.

LONDON:
PRINTED BY HARRISON AND SONS,

NORTH AMERICA. No. 6 (1872).

THE

COUNTER-CASE

OF THE

UNITED STATES

PRESENTED TO THE

TRIBUNAL OF ARBITRATION

GENEVA.

UNDER THE

PROVISIONS OF THE TREATY OF WASHINGTON,

APRIL 15. 1872.

Presented to both Houses of Parliament by Command of Her Majesty.
1872.

LONDON:
PRINTED BY HARRISON AND SONS.

[C.—531.] *Price 2d.*

Counter-Case of the United States.

THE IVth Article of the Treaty of Washington permits each Party, within four months after the delivery of the Case, to deliver in duplicate to the Arbitrators and to the Agent of the other Party, a Counter-Case and additional Documents, Correspondence, and Evidence, in reply to the Case, Documents, Correspondence, and Evidence presented by the other Party.

Availing themselves of this right, the United States present this as their Counter-Case, together with additional Documents, Correspondence, and Evidence in reply to the Case, Documents, Correspondence, and Evidence submitted by Her Majesty's Government.

In laying this Counter-Case before the Tribunal of Arbitration, they deem it proper to premise that they do not consider it within the province of this paper to discuss all the propositions within the British Case which they regard as justly disputable or requiring argumentative discussion. So far as the positions taken by Her Majesty's Government in its Case vary from those which the United States had the honour to lay before the Tribunal in their Case, they respectfully refer to that document for an expression of the views which they regard as supported by sound principles of reason and by the acquiescence of other Powers, and by the writings of publicists of authority.

So far too as contestations of questions of fact are raised between the Parties, on their respective Cases and the supporting evidence on either side, a mere renewal of the contestation in the Counter-Case would be superfluous. The United States, therefore, refer to their original Case for their views and estimates of the contested matters of fact.

It has seemed to them to be more in accordance with the spirit of the Treaty and with the convenience of the Tribunal, thus to reserve for their Counsel the general analysis and discussion of these matters, so far as they shall prove important in their bearing upon the substantial controversy between the Parties, in the Argument which will be prepared by them for submission under the Vth Article of the Treaty, and in such oral arguments, if any, as the Tribunal may express a wish to hear.

Reserving, therefore, their rights and the freedom of their Counsel in these respects, they ask the attention of the Tribunal to the following observations upon some of the main points of difference between the Case and other matter submitted on the part of Her Majesty's Government, and those submitted on the part of the United States.

I.

Certain errors of sense, which run through the Case of Her Majesty's Government, first claim attention.

1. It is assumed in that Case that the rebels of the United States were, by Her Majesty's Proclamation of May 3, 1861, invested with some undefined *political* attributes. But the United States have hitherto understood that Her Majesty's Government merely assumed to regard the persons who resisted the power of the United States as a body of insurrectionists who might be recognized as clothed with belligerent rights at the discretion of neutral Powers. They therefore think it right to conclude that the frequent use in the British Case of language implying recognized *political* attributes in the insurrection is an inadvertence.

2. Her Majesty's Government assume that the reclamations of the United States are to be confined to claims growing out of the acts of the Florida, the Alabama, the Georgia, and the Shenandoah. The claims growing out of the acts of the other vessels named in the American Case are regarded by the United States as also embraced within the terms of the Treaty. They form part of the claims generally* known as the "Alabama Claims." They are enumerated in the fourth of a series of five volumes printed by order of the Senate of the United States, which are part of the "Documents, Correspondence, and Evidence," submitted with the Case of the United States. These volumes, when thus collected and printed, were entitled, "Claims of the United States against Great Britain." It is

* *Sic in orig.*

believed that under that title they were in the library of the Foreign Office at London before Her Majesty's High Commissioners received their instructions. It may also be said, without impropriety, that under the same title they were on the table of the Joint High Commission during the negotiations which preceded the conclusion of the Treaty. The United States, therefore, while reasserting their construction of the language of the Treaty in this respect, feel that they have the right to ask the Arbitrators to assume that Her Majesty's High Commissioners had notice of and acquiesced in that construction.

3. The United States are at a loss to understand why several observations are introduced into the British Case, which apparently aim to limit the operation of the three Rules of the Treaty. If by the principles of construction which are suggested, Her Majesty's Government intend to ask for a modification or change in those Rules, the United States cannot too strongly protest against it.

4. It is averred in several places that some of the acts of which the United States complain were committed by American citizens. If these statements are introduced for the purpose of urging this fact as an excuse for the negligence of Her Majesty's officials, or for any other supposed relevant purpose, the United States will ask the Tribunal to take note that the "American citizens" referred to were criminals in the eye of American law, at the time when they were elevated to the rank of recognized belligerents against the United States by the act of Her Majesty's Government, an act in which the United States did not participate, and against which they have never ceased to protest. It would seem, therefore, to be impossible to impute to the United States any consequences of responsibility for the conduct of the persons thus described as "American citizens."

II.

Her Majesty's Government has also stated, in terms, many propositions, some of law, some of fact, some of mixed law and fact.

For the convenience of the Arbitrators the United States call attention to some of the leading points of difference between the two Cases, with the reservations heretofore made as to the points not noticed, and as to the rights of Counsel.

1. The British Case seems to concede that a belligerent who has wronged a neutral by violating its sovereignty and by forcing it to take part, indirectly, in a war, may nevertheless, by some subsequent act (such as commissioning without the jurisdiction of the neutral a vessel of war improperly constructed within its jurisdiction) deprive the neutral of the right of taking cognizance of the original offence.

The United States suggest that such a right cannot be lost by the mere act of the offending belligerent.

2. It appears to claim for vessels of rebels recognized as belligerents an exemption from national jurisdiction, which should be accorded, if at all, only to vessels of recognized sovereign Powers, to which Powers political representations can be made in case of violations of neutral sovereignty; and it ignores undoubted prerogatives of the Crown to exclude armed vessels from the national ports.

3. It attempts to limit the operation of the words "due diligence" in a manner inconsistent with principles of law well established on the Continent of Europe, in the United Kingdom, and in the United States. It sets up as the measure of care a standard which fluctuates with each succeeding Government in the circuit of the globe, viz., "such care as governments ordinarily employ in their domestic concerns."

4. If the United States have correctly interpreted its somewhat vague language, on page 167, it asserts that, in a case like the present, a belligerent should be required to show on the part of a neutral, as a foundation for a claim for compensation, an absence of care nearly equivalent to wilful negligence. The United States had notice that this point would be pressed by Her Majesty's Government. It had announced that its Case would be prepared partly under the direction of an eminent and learned publicist who had vigorously insisted upon it in his public writings on the neutrality of Great Britain in the American struggle. They therefore presented for the consideration of the Arbitrators certain facts exhibiting an unfriendly feeling towards them on the part of individual members of Her Majesty's Government during the contest, which might naturally lead to and would account for a want of diligence bordering upon wilful negligence. But, while thus anticipating this position of Her Majesty's Government's Case, they did not and do not assent to its correctness. They do not conceive that the law of nations tolerates the proposition that belligerents are required to submit, without redress, to the injuries of neutral negligence till it reaches the extremity suggested.

5. The British Case attempts to narrow the international duties of a government to the exercise of the restraining powers conferred upon it by municipal law.

6. It overlooks the obligation of the neutral to amend its municipal laws, when the powers conferred by such law prove inadequate for the performance of international duties, In this view the many statements in the British Case as to the actual internal distribution of powers in Her Majesty's Government, though interesting, are irrelevant in measuring its external obligations.

7. The British Case proposes that the liability of Great Britain to make indemnity to the United States should be limited to the cases which the United States cannot show, by affirmative proof, that they actively and diligently exerted their naval power to prevent. The United States contend that such a proposed limitation has no just foundation in sound principles of International or other law.

III.

Part II of the British Case assumes to give an introductory statement of (1) "the events which attended and followed the commencement of the civil war in America;" (2) "the course pursued by Great Britain in relation to the war;" (3) the course pursued by "the other maritime powers" in relation thereto. Part III assumes to give a "statement on international rights and duties: on the powers which were possessed by Her Britannic Majesty's Government of preventing 'unlawful equipments,' and the manner and circumstances in and under which these powers were exercised during the war."

The United States, with the reservation heretofore made, now call attention only to some of the principal points of difference, in this respect, between the Cases of the two Governments.

1. The United States insist that Her Majesty's Government is politically and historically in error in the assertion on page 6, that the contest terminated in 1865 in the complete reconquest of the eleven Confederated States.

2. If it be intended by the statement in page 7, that "in and soon after the month of May 1861, a number of armed ships were fitted out and sent to sea from ports in the Confederate States," to lead the Arbitrators to suppose that there was any insurgent vessel preying on the commerce of the United States when the Florida or when the Alabama escaped from Liverpool, the United States cannot too strongly protest that Her Majesty's Government is in error in this respect.

3. The United States have, in their Case, called the attention of the Tribunal to the acts of Belgium, Portugal, Russia, and Prussia, which seem to have been overlooked by the authors of the British Case in their enumeration of the acts of the Maritime Powers. In regard to all the Maritime Powers, the Tribunal will doubtless observe that those which recognized the insurgents as lawful belligerents did so only after Great Britain, the principal Maritime Power, had elevated them, under the name of the "Confederate States," to this rank, and had thus conferred upon them all the substantial advantages which they could gain from a general recognition by the Maritime Powers. They will also observe that the other Governments did not recognize the title which the insurgents had taken for themselves. Thus, for example, the Proclamation of the Emperor of the French spoke of them as "States which pretend to form a Confederation;" the Circulars of the Dutch Government spoke of "the doubtful complications in the United States of North America;" "the existing disturbances in the United States of America;" and the Brazilian Circular expressly states that "the Confederate States have no legal existence."

4. It is stated on page 22 that, "by the United States' cruizers, the ports and waters of Her Majesty's Dominions were resorted to for coaling and other purposes more frequently than by vessels of the Confederate States." If by this it is intended to imply that, having regard to the great disparity of numbers between the vessels of the United States and those of the insurgents, the United States enjoyed to an equal extent with the insurgents the hospitalities of the British ports, or that, without regard to that disparity, those hospitalities were extended with an impartial neutrality to each, the United States emphatically deny it.

5. It is stated on page 25 that "the Acts of which the Government of the United States is understood to complain, belong to a class which have not commonly been made the object of prohibitory legislation," that "in few countries, or in none, according to the information received by Her Britannic Majesty's Government, did the law directly prohibit such acts, or make any definite provision for preventing them at the time when this war began, except in the United States and Great Britain." The information of the United States on this point does not agree with that of Her Majesty's Government. They have the honour to refer the Tribunal to statements concerning the laws of Austria, Belgium, Denmark, France, Italy, the Netherlands, Portugal, Prussia, Spain, and Sweden and Norway, which will be found in the fourth Appendix attached to the Report of the Neutrality Laws Commissioners. This document will be found at the close of the third

volume of the British Appendix, and in the fourth volume of the American evidence, between pages 126 and 168. They also refer to the documents and evidence herewith submitted regarding the laws of several Powers in Europe and America for the preservation of their neutrality. It will appear from all this evidence that acts such as those of which the United States complain, have been widely made the subject of positive legislation, and that in no country, except Great Britain, so far as the United States are advised, has it been assumed that proceedings under the Municipal or Local Laws are the measure of neutral obligations towards other Governments.

6. On page 25, it is stated, with reference to the steps taken by President Washington, that "the measures adopted by the Executive of the United States to restrain these enterprises [the fitting out of French privateers] proved inadequate." In answer to this, the United States recall to the recollection of the Tribunal that the French Minister of that day contended that his Government derived the right to commission privateers from the ports of the United States from the provisions of the Treaty of 1778 between France and the United States,—a Treaty made at a time when Great Britain was at war with the United States. The repressive measures of President Washington were taken under a sense of the duties of the United States as a neutral under the Laws of Nations, and in the face of their particular duties under the Treaty, as construed by France. In the Memoir of Mr. Abbott (now Lord Tenterden) which will be found in the British Appendix at the end of vol. 3, it is stated that "the result of the publication of the Rules of the 4th of August [which were the measures adopted by the Executive referred to in the British Case] was that the system of privateering was, generally speaking, suppressed, though cases seem to have occurred until the arrival of M. Genêt's successor in February 1794, who disavowed his acts, and recalled the Commission he had granted to privateers."

7. The remarks on pages 26, 27, and 28, regarding the manner in which the United States have at different times performed their duties as a neutral nation towards Spain, Portugal and other Powers, are stated to be made without any "intention of Her Majesty's Government to cast any reproach upon the Government or people of the United States." They are, however, apparently introduced for the purpose of inducing the Arbitrators to assume that the United States at some or all of those times did fail to use the diligence for the repression of hostile expeditions from their shores which ought to have been exercised, and which is required by the Rules of the Treaty of Washington. The United States would regard such an imputation as a reproach however intended by its authors. They have therefore determined to ask the Arbitrators to examine the further evidence on these points which they have the honour to submit herewith, although they cannot but recognize that the Arbitrators may justly feel that neither party ought to add to their arduous labours, by the introduction of statements and evidence wholly foreign to the issues submitted to their decision. The evidence now submitted by the United States regarding the performance of their international duties is voluminous and spreads over a series of years and a variety of incidents. It relates to the contest between Spain and her Colonies, to the war between Brazil and the Artigas Government—to struggles of Cubans for independence—to the war between Spain and the South American Republics—and to the Crimean war. In all these contests it became the duty of the United States to preserve their neutrality under difficult circumstances; often when the sympathies of large masses of their people were enlisted in opposition to the national obligations. Her Majesty's Government has thought it right to call in question the efficiency, while admitting the good faith with which the United States performed their duties in these trying circumstances. The evidence now submitted shows conclusively that Her Majesty's Government has been misinformed: that the United States did perform their duties as a neutral at those times with a fidelity and activity which, had they been imitated by Great Britain during the insurrection, would have made the present proceedings unnecessary.

8. The United States unite with Her Majesty's Government in its remarks on page 27, calling attention to the fact that the President of the United States, at the request of the Portuguese Government, did, in 1817, recommend Congress to confer upon the Government not only power to punish offenders, but also power to prevent the commission of the offences, and that Congress did, in compliance with such request, confer such power in the Neutrality Acts of 1817 and 1818.

9. The United States are at a loss to understand to what reference is intended by the words on page 28: "It is needless here to refer particularly to more recent instances of vessels fitted out in ports of the United States for expeditions against countries with which the United States were at peace. These instances are well known." Vague insinuations like these, without definite statement, allegation, or proof, furnish no foundation for an answer in the only form in which the Treaty permits the United States to defend themselves.

10. The United States emphatically deny the statement on page 28 that their prohibitory laws "have been infringed by acts much more flagrant than any of those now charged against Great Britain." They feel confident that a fair consideration of the proof which they have offered, and of that which they now offer, showing the fidelity with which they have ever performed their international duties, will convince the Arbitrators that they have honestly, strenuously, in good faith, and with due diligence, striven to perform those duties.

11. The United States think that Her Majesty's Government has been incorrectly informed regarding the United States' Statute of 1818, commonly known as the Neutrality Act. It is stated on page 29 that the British Act of 1819 is "more stringent, rigorous, and comprehensive than that of the United States." Her Majesty's Government does not say in what respect the superior stringency, rigour, and comprehensiveness of that Act is supposed to consist. If the British Act could have been suspended by the Act of the Crown, which is supposed to have been the case, it may at least be held to have furnished less permanent and certain remedies than the law of the United States. The United States think that the qualities of stringency, rigour, and comprehensiveness will be found in their law in a superior degree; and they call attention to the following points of comparison:— 1. Enlistments of British subjects only are made unlawful by the British Act; the American Act, on the contrary, makes all enlistments within the neutral jurisdiction unlawful, except naval enlistments of subjects of the enlisting belligerent, made on the deck of a vessel of the belligerent while within the neutral waters. 2. By executive and judicial construction, the words "equip," "fit out," and "furnish" have received a much broader meaning in America than in Great Britain, as the United States have explained in their Case. 3. The 10th and 11th sections of the American Act, commonly known as the bonding clauses, are admitted not to be in the British Act. And it is also admitted that these clauses are intended to be preventive, not punitive. 4. The 8th section of the United States' Act is also omitted in the English Act. This section, the practical operation of which is explained in the Case of the United States, is regarded by them as by far the most efficient part of the Act for the prevention of violations of neutrality. 5. It may not have escaped the attention of the Arbitrators that Her Majesty's Government has itself furnished evidence of the superiority of the United States' Statute over the British Act. "I may remark," says Sir Frederick Bruce, the British Minister at Washington, writing to his Government, "that the Government of the United States has considerable advantages in proceeding against vessels under the Statute. They have, on the spot where the preparations are being made, the District Attorney, a legal officer responsible to the Government, to whom the duty of investigation is committed. The libel is in the nature of a proceeding in Admiralty *in rem.* It is decided by a Judge conversant with international and maritime law, without the intervention of a jury."—(Vol. III, British Appendix, last paper, page 67; Vol. IV, American Evidence, page 162.)

12. Without questioning, in the Counter-Case, the correctness of propositions 1, 2, and 3 of English Constitutional Law, on page 30, the United States think that they are not mistaken when they say that the privilege which a witness is supposed to have of refusing to answer a question is a personal privilege, of which the witness may or may not avail himself. It is not supposed to be one which a Court will voluntarily take for him, and enforce against his wishes.

13. In the statements on pages 31 and 32, regarding the supposed duties of the officials of the United States, "to keep a watchful eye on whatever might tend to endanger the security or interests of the United States," &c., it is not made quite clear whether Her Majesty's Government regard these as duties of which it had the right to demand performance of these officials, or as duties which they owed to their own Government. Although the latter interpretation would seem to be the most reasonable one, there is some ground to suppose that Her Majesty's Government has made the statement in the former sense. Without admitting it in that sense to be just, the United States insist that, even should such an obligation not be disputed, Her Majesty's Government would not thereby be relieved from the duty of an independent, diligent, and vigilant watchfulness, in order to prevent evil disposed persons from violating its neutrality. Nor would the Minister of a belligerent Power (as Mr. Adams was in the eye of the English Cabinet) be required, after the receipt of official information as to the nature and character of the evidence that must accompany his representations, to make, or complained of for not making, representations of fact to the neutral Government, except in the manner in which he had been notified to make them. Thus (to apply the proposition), Mr. Adams, being notified by the British Government that, in order to secure official action on a complaint of a contemplated violation of British neutrality by the insurgents, he must furnish proof of the fact sufficient to warrant conviction for a violation of the Foreign Enlistment Act, could not be charged

by that Government with responsibility for not making representations embodying a lesser degree of proof.

14. The United States do not understand that it is true that "allegations that vessels were being prepared for cruizing or carrying on war," were in all cases followed by seizure of the vessels when sufficient *primâ facie* evidence of the illegal purpose was furnished. They understand exactly the contrary to have been the case:—that until the opinion of the Law Officers of the Crown, given on the 29th day of July 1862, (the day of the escape of the Alabama), all branches of Her Majesty's Government held that it was necessary not only to establish a preparation for cruizing or carrying on war, but also an actual arming of the offending cruizer in a British port, in order to justify seizure, and that this prevailing opinion was afterwards sustained in effect by the Courts of England in the Alexandra case, which is still the unreversed judicial construction of the Act of 1819.

15. On page 57 is given what purports to be an explanation of the meaning of the words "Registry" and "Clearance," and of the duties of the officers empowered to register ships, and of the officers of the Customs in respect to clearances. The Acts of Parliament prescribing the duties and conferring the powers, are not specially referred to: but the United States understand them to be "The Merchant Shipping Act, 1854," (17 and 18 Vict., cap. 104), and the "Customs Consolidation Act, 1853" (16 and 17 Vict., cap. 107), with their several amendments. These Acts, in the opinion of the United States, confer more extended powers upon the officers of Her Majesty's Government than is stated in the British Case, and they therefore ask the attention of the Tribunal to the Acts themselves, extracts from which are submitted herewith.

IV.

Part IV of the British Case assumes to state certain considerations proper to be kept in view by the Arbitrators, in reference to the Cases of the Florida, Alabama, Georgia, and Shenandoah.

The United States have already made it clear, both in their Case and in this paper, that they regard many of these statements as not "proper to be kept in view by the Arbitrators" in reference to any of these vessels. Without repeating their views on this subject, they confine themselves to calling attention to a great error into which the Arbitrators may be led in consequence of the use of inaccurate or careless language in the closing paragraph of this statement in the British Case.

It is there stated, that "Claims for the interference of Her Majesty's Government in the case of these and other vessels were based, according to the statement of Mr. Adams, in his letter to Earl Russell, dated 9th of October 1862, on evidence considered by him to apply directly to infringements of the Municipal Law, and not to any thing beyond it."

It is quite possible, perhaps it is not too much to say that it is probable, that the Arbitrators may derive from this statement the impression that all the official representations of Mr. Adams, in respect to these four vessels, were expressly based on evidence offered by him in support of allegations of infringements of the Municipal Law. The United States call attention to this, feeling confident that Her Majesty's Government will be anxious to exclude a construction of its language which is so little in accordance with the facts.

V.

Part V of the British Case is entitled: "Statement of facts relative to the Florida." The evidence in support of this part of the Case is to be found in Vol. I of the Appendix, between pages 1 and 165 inclusive.

There are few discrepancies in the two accounts of the career of this vessel. The new evidence, furnished by Her Majesty's Government, sustains and confirms the views of the United States, and attention is called to some instances of this character.

1. It now appears clearly that, before the Florida left Liverpool, the British Government received information from the Government of His Majesty the King of Italy, that the pretence that the Florida was constructed for the Italian Government was a fraud.

2. The participation of the legal authorities at Nassau in the conspiracy for the discharge of the Florida, which was charged by the United States, is established by the official reports accompanying the British Case.

3. Her Majesty's Government introduces, on pages 73-4 of its Appendix, evidence which sustains the allegations in the American Case, that the Florida was, in outward appearance, a British man-of-war, and that, in such an assumed character, with the British flag flying, she passed the blockading squadron off Mobile, and that her real character was

not suspected until too late to stop her. This act was described at the time by the distinguished Admiral who witnessed it, as only "an *apparent* want of vigilance."

4. The official Report of the Governor of Barbadoes of what took place there in February 1863, shows that there has been an evident mistake on the part of the Governor as to the San Jacinto. It also brings home to the Governor positive knowledge of the fact that the act which he was committing was a violation of international duty towards the United States.

5. It now appears in clear colours that Bermuda was made a base of hostile operations by the Florida. The commander of that vessel, having coaled, and having been at Barbadoes within less than seventy days, and having then cruized off the port of New York, destroying American vessels, arrived at Bermuda and informed the Governor of all these facts. The Governor, with a knowledge of them, gave him a hospitable reception, and permitted him to coal and repair. These facts were officially reported to Her Majesty's Government, and were formally approved at the Foreign Office. Until now, the United States have been unable to establish, without the aid of presumptions, all the links in the chain of evidence.

6. It is stated in the British Case that "had the vessel been seized by Her Majesty's Government, a Court of Law would have ordered, and would indeed have been bound to order the immediate restoration of her for want of evidence to support a forfeiture." It is not for the United States to challenge the statements of Her Majesty's Government regarding British Municipal Law. Their officials sought, during the rebellion, to induce Her Majesty's Government to stop the vessels constructed in Great Britain to cruize against the United States. They did not ask for their forfeiture, they did not object to a restoration to their owners, provided they were not to leave British waters to carry on war against the United States. It is necessary to bring the Tribunal back to this simple proposition, which has been obscured by the irrelevant considerations put forth by Her Majesty's Government.

7. It is scarcely necessary to say that the United States deny the allegations regarding the supposed negligence of their navy.

VI.

The statements made regarding the Alabama in the VIth part of the British Case conflict but little with those made in the American Case. In many respects they strengthen the American statement.

1. There is no discrepancy as to what took place in Liverpool prior to the escape of the vessel. Some new facts are introduced. For example: (*a*) that in reply to Mr. Adams' first representations, the Law Officers of the Crown advised that he should be informed that Her Majesty's Government was investigating the Case, and that their course would depend upon the nature and the sufficiency of any evidence of a breach of the law which they might obtain; (*b*) that the official legal advisers of the Customs gave opinions on the evidence contained in Mr. Adams' representations which were in conflict with the opinions of the Law Officers of the Crown; (*c*) that these opinions were given upon the questions after they had been submitted to the Law Officers of the Crown, and before the latter had rendered their opinions; (*d*) that the Customs Department of Her Majesty's Government (to which Mr. Adams was referred by Earl Russell as charged with the management of the affair) acted on the opinions of their own advisers, at a time when they must have known that the Law Officers of the Crown had the subject under consideration.

2. The opinion of the Law Officers of the Crown now first made public confirms the views of the United States presented in their Case.

3. It appears that the Commissionners of Customs knew on Tuesday the 29th of July, that the Alabama had escaped that day, and that it was not until Friday, the 1st of August, that the Collectors at Holyhead and Beaumaris received instructions to detain her. On the 2nd of August, the Collector at Beaumaris reported that he had attended to his instructions, and had found that the Alabama had left Point Lynas on the morning of Thursday the 31st. If, therefore, the instructions given on the 1st of August had been given on the 29th of July, the Alabama might have been detained at Point Lynas.

4. Her Majesty's Government introduce a despatch of Mr. Adams regarding his correspondence with Captain Craven, apparently with a purpose of assuming hereafter that Captain Craven was guilty of some negligence. It appears that Captain Craven was at Southampton with his vessel (the Tuscarora) on the 29th of July; that he left there for Queenstown, arriving at the latter place on the 30th; that, on the 31st, he received a telegram informing him that the Alabama was off Point Lynas; and that on the 1st of August he set sail up St. George's Channel towards that point. Mr. Adams objected to

the course he took. as bringing him within British waters. Facts revealed subsequently to Mr. Adams' despatch, show that the Alabama had left Point Lynas before Captain Craven knew that she had been there. Without regard, therefore, to principles which might well be disputed, this fact relieves the Arbitrators from considering any supposed responsibility of the United States for the acts of the Tuscarora at that time.

5. The British Consul's Report of the visit of the Alabama to Martinique shows that she was in the habit of sailing under the British flag. This was known to Her Majesty's Government on the 17th of December, 1862.

6. In January 1863 the Alabama entered Port Royal, Jamaica, for repairs and to land prisoners. The course of the Governor in allowing such hospitalities to be granted was approved by Earl Russell, February 14, 1863. This approval appears to have been given without regard to the advice of the Law Officers of the Crown. (Appendix, page 212.)

7. Great stress is apparently laid on the reception and acts of the Alabama in Brazilian waters. The United States invite attention to the striking contrast between the course of Her Majesty's Government in the acts complained of before the Tribunal, and the course of the Emperor's Government, as shown in inclosure No. 4, on page 276 of the Appendix; as shown in the Brazilian Circular on page 284, stating that "the Confederate States have no legal existence," that they have been recognized as belligerents only, "with the necessary restrictions," and that the exportation of warlike articles from the ports of the Emperor to the insurgents, whether under the Brazilian or a foreign flag, was forbidden; but that a similar trade to the ports of the United States was forbidden only to the Brizilian flag; as shown in the rule as to coal, and as shown in the carefully drawn distinction between hospitalities like those permitted in the British West Indian ports for the purpose of aiding a vessel in a hostile cruize and hospitalities given to enable a vessel to reach a home port.

8. Her Majesty's Government aver. that the original crew of the Alabama was not enlisted for the service of the insurgents. The United States contend that the evidence shows that a large portion of the crew knew quite well whither they were going.

9. The United States contend that it is immaterial whether they did or did not make any efforts to capture the Alabama. The fact is, however, that they made great efforts and incurred great expense for that purpose.

The United States also respectfully refer the Tribunal of Arbitration to the correspondence with the Portuguese Government and authorities concerning this vessel, which is contained in the document submitted with this Counter-Case.

VII.

The evidence offered by Great Britain regarding the Georgia is in the main identical with that offered by the United States. In some respects, the new documents strengthen the case of the United States.

1. It appears that Her Majesty's Government was officially informed by its own officials, of the suspicious character of the Alar, two days in advance of Mr. Adams' information, and that it took no steps in consequence,

2. It is intimated that Mr. Adams was in possession of information before the sailing of the Georgia, which he should have communicated to Her Majesty's Government; but it is conceded that the information would not have justified conviction under the Foreign Enlistment Act, and that Mr. Adams had, before then, been informed that Her Majesty's Government could not act on less complete representations.

3. It appears that orders were given to a British vessel of war to proceed to Alderney; but it does not appear whether those orders were or were not obeyed.

4. The report made in 1871 of the arming of the Georgia differs from the contemporaneous accounts made by eye-witnesses.

5. When Her Majesty's Government made the statement that no serious endeavour to intercept or capture the Georgia appears to have been made on the part of the United States, it was mistaken. This correction is, however, made under protest, that the United States were under no obligation towards Great Britain to relieve her from the consequences of her original wrong-doing.

VIII.

As with the other vessels, so with the Shenandoah, the evidence in the two Cases is largely the same; and the evidence exclusively presented by Her Majesty's Government strengthens the views and theories of the United States.

1. It appears in the opinion of the Law Officers of the Crown (pages 141-2) that the

Sea King was regarded as a British vessel until after its arrival at the Azores ; that acts took place there on its deck which were esteemed to be violations of the Foreign Enlistment Act; and that the question whether her deck was not at that time a place belonging or subject to Her Majesty was thought to be a serious one. The acts which are referred to as having taken place there within British jurisdiction were some of the acts of which the United States now complain.

2. The United States do not admit that the persons who went out in the Laurel are to be regarded as ordinary passengers. They were persons who, in violation of the duties of Great Britain, as a neutral, were recruited in England to serve on the Shenandoah.

3. The official report of the Governor of what took place at Melbourne confirms the account given by the United States in their Case. By inclosure 19 on page 499 (Appendix) and by inclosure No. 22 on page 500, it appears that immediately after her arrival at Melbourne she was known as the Sea King. By paragraph 9 pages 505-6, it appears that the Commander was not pressed to go to sea until he was quite ready to go; by paragraph 20 on page 507, it appears that the Governor was consenting to the condonation of the offences of the Shenandoah against British neutrality; by the police report on page 523, it appears that the Government was officially informed by its own officers that the commander intended to ship 40 men at Melbourne; and by inclosure 90 on page 529 it appears that, although the stay of the Shenandoah at Melbourne was nominally for the repair of the screw and its bearings, that part of the machinery was not touched until the vessel had been fourteen days in port. The United States cannot admit that there was any vigilance exercised by the officers of the Colonial Government.

4. The United States, for reasons stated in their Case, cannot agree with Her Majesty's Government in the statements made in the first paragraph of page 160 of the British Case, regarding the crew of the Shenandoah and Temple's affidavit: nor can they accept as true the statement of the Commander of the Shenandoah cited by Her Majesty's Government on page 167, that on receiving intelligence of the overthrow of the insurrection, he "desisted instantly from further acts of war."

5. The United States, as to the Shenandoah, make the same statement which they have already made in reply to the statements of Her Majesty's Government touching attempts to intercept or capture the Georgia.

IX.

On page 167 of the Case of Her Majesty's Government, it is said: "If the Tribunal should come to the conclusion that Great Britain has incurred any liability to the United States, the question will then arise what should be deemed the just measure and extent of that liability. Her Britannic Majesty's Government abstain at present from entering into that question, and will reserve such observations as may be fitly offered in relation to it to a later stage of the proceedings. Here it is sufficient to remark that a claim on the part of a belligerent to be indemnified at the expense of a neutral for losses inflicted or occasioned by any of the ordinary operations of war, on the plea that those operations were assisted or facilitated by negligence on the part of the neutral Government, is one which involves grave considerations, and requires to be weighed with the utmost care. Losses of which such negligence is the direct and proximate cause (and it is in the respect of such only that compensation could justly be awarded) are commonly not easy to separate from those springing from other causes."

The United States concur with Her Majesty's Government in the opinion that "a claim on the part of a belligerent to be indemnified at the expense of a neutral for losses inflicted or occasioned by any of the ordinary operations of war," "is one which involves grave considerations, and requires to be weighed with the utmost care." Without the explanatory observations which Her Majesty's Government reserves the right to make in a later stage of the proceedings, they cannot say how far they do or do not concur in the further statement that compensation can only justly be awarded by the Tribunal in respect to losses of which the negligence of the neutral is the direct and proximate cause.*

It appears to them, however, that certain general considerations may reasonably be assumed by the Arbitrators. 1. Both Parties contemplate that the United States will

* On the 469th page of the American Official Case in the English language, after enumerating the several classes of claims for injuries, the United States say, "*So far as these various losses and expenditures grew out of the acts committed by the several cruizers*," the United States are entitled to ask compensation and remuneration before this Tribunal." In the unofficial French translation, made for the convenience of the Arbitrators, there is no equivalent for the important words in italics above cited. (French version, page 377.) The Agent of the United States received the book just as the Conferences at Geneva in December were about to begin, and did not discover the error in time to correct it at that Conference. He now takes the first opportunity to call attention to it.

endeavour to establish in these proceedings some tangible connection of cause and effect between the injuries for which they ask compensation and the "acts committed by the several vessels" which the Treaty contemplates, are to be shown to be the fount of those injuries. 2. The Tribunal of Arbitration being a judicial body, invested by the Parties with the functions necessary for determining the issues between them, and being now seized of the substance of the matters in dispute, will hold itself bound by such reasonable and established rules of law regarding the relations of cause and effect, as it may assume that the Parties had in view when they entered into their engagements to make this reference. 3. Neither party contemplates that the Tribunal will establish or be governed by rules in this respect, which will either on the one hand tend to release neutrals from their duty to observe a strict neutrality, or, on the other hand, will make a course of honest neutrality unduly burdensome.

Leaving now the issues raised by the Cases and Counter-Cases of the two Governments to the arguments of Counsel and to the decision of the Tribunal, the United States repeat with a strengthened conviction the language with which they closed their Case: "It is in the highest interest of the two great Powers which appear at this bar, that the causes of difference which have arisen between them should be speedily and for ever set at rest. The United States entertain a confident expectation that Her Majesty's Government will concur with them in this opinion."

NORTH AMERICA. No. 6 (1872).

The Counter-Case of the United States presented to the Tribunal of Arbitration at Geneva, under the provisions of the Treaty of Washington,

Presented to both Houses of Parliament by Command of Her Majesty. 1872.

LONDON:
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NORTH AMERICA. No. 7 (1872).

CORRESPONDENCE

RESPECTING

CLAIMS FOR INDIRECT LOSSES

PUT FORWARD IN THE

CASE PRESENTED BY THE UNITED STATES' GOVERNMENT

TO THE

TRIBUNAL OF ARBITRATION AT GENEVA.

Presented to both Houses of Parliament by Command of Her Majesty.
1872.

LONDON:
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Correspondence respecting Claims for Indirect Losses put forward in the Case presented by the United States' Government to the Tribunal of Arbitration at Geneva.

No. 1.

Earl Granville to General Schenck.

Sir, *Foreign Office, February* 3, 1872.

HER Majesty's Government have had under their consideration the Case presented on behalf of the Government of the United States to the Tribunal of Arbitration at Geneva, of which a copy had been presented to Her Majesty's Agent.

I will not allude in this letter to portions of the American Case which are comparatively of smaller importance, but Her Majesty's Government are of opinion that it will be in accordance with their desire that no obstacle should be interposed to the prosecution of the Arbitration, and that it will be more frank and friendly towards the Government of the United States, to state at once their views respecting certain claims of an enormous and indefinite amount which appear to have been put forward as matters to be referred to Arbitration.

Her Majesty's Government hold that it is not within the province of the Tribunal of Arbitration at Geneva to decide upon the claims for indirect losses and injuries put forward in the Case of the United States including the loss in the transfer of the American commercial marine to the British flag, the enhanced payments of insurance, and the prolongation of the war, and the addition of a large sum to the cost of the war and suppression of the rebellion.

I have stated above the importance which Her Majesty's Government attach to the prosecution of this Arbitration.

The primary object of the Governments on both sides was the firm establishment of amicable relations between two countries which have so many and such peculiar reasons to be on friendly terms, and the satisfaction with which the announcement of the Treaty was received by both nations showed the strength of this feeling.

But there is another object to which Her Majesty's Government believe the Government of the United States attach the same value as they do themselves, viz., to give an example to the world how two great nations can settle matters in dispute by referring them to an impartial Tribunal.

Her Majesty's Government on their part feel confident that the Government of the United States are also equally anxious with themselves that the amicable settlement which was stated in the Treaty of Washington to have been the object of that instrument, may be attained, and an example so full of good promise for the future should not be lost to the civilized world.

I have, &c.
(Signed) GRANVILLE.

No. 2.

General Schenck to Earl Granville.—(Received February 6.)

My Lord, *Legation of the United States, London, February* 5, 1872.

I HAVE the honour to acknowledge the receipt, on the evening of the 3rd instant, of your note of that date, in which, after stating that Her Majesty's Government have had

under their consideration the Case presented on behalf of the United States to the Tribunal of Arbitration at Geneva, you proceed to say that you will not allude to several portions of that Case which are of comparatively smaller importance, but that Her Majesty's Government are of opinion that it will be in accordance with their desire that no obstacle should be interposed to the prosecution of the arbitration, and that it will be more frank and friendly towards the Government of the United States to state at once their views respecting certain claims, which you describe as of an enormous and indefinite amount, which appear to have been put forward as matters to be referred to arbitration.

You then go on to state that Her Majesty's Government hold that it is not within the province of the Tribunal of Arbitration at Geneva to decide upon the claims for indirect losses and injuries put forward in the Case of the United States, including the loss in the transfer of the American commercial marine to the British flag, the enhanced payment of insurance, and the prolongation of the war, and the addition of a large sum to the cost of the war and suppression of the rebellion.

Referring then to the importance which Her Majesty's Government attach to the prosecution of the arbitration, you proceed to speak of the objects which Her Majesty's Government had in view in that arbitration. The primary object, you say, was the firm establishment of amicable relations between two countries which have so many and such peculiar reasons to be on friendly terms; and you add that the satisfaction with which the announcement of the Treaty was received by both nations showed the strength of that feeling.

But you say there is another object to which Her Majesty's Government believe the Government of the United States attach the same value as they do themselves, namely, to give an example to the world how two great nations can settle matters in dispute by referring them to an impartial tribunal.

And you close your note with the statement that Her Majesty's Government, on their part, feel confident that the Government of the United States are also equally anxious with themselves that the amicable settlement which was stated in the Treaty of Washington to have been the object of that instrument may be attained, and that an example so full of good promise for the future may not be lost to the civilized world.

The purpose of your Lordship's writing appearing to be to notify me of the opinion which Her Majesty's Government hold as to the power of the Tribunal of Arbitration to decide upon certain claims for indirect losses and injuries put forward in the Case of the United States, I shall hasten to communicate your note with this information to my Government.

In the mean time I venture to assure your Lordship that the Government of the United States will be gratified by this renewed assurance of the desire of Her Majesty's Government that no obstacle should be interposed to the prosecution of the arbitration, and by the frank and friendly terms in which this statement of their views is made to me. The objects, which the Government of the United States proposed to itself in the Treaty and the arbitration for which it provides, being identical with those stated by your Lordship, that is, the firm establishment of amicable relations between the two countries, and the giving to the world an example showing how two great nations can settle matters in dispute by referring them to an impartial Tribunal, I can further assure your Lordship that my Government does reciprocate most fully and earnestly the anxiety that the speedy settlement by arbitration, which was provided for by the Treaty of Washington, may be attained, so that, as your Lordship has eloquently expressed it, an example so full of good promise for the future may not be lost to the civilized world.

I have, &c.

(Signed) ROBT. C. SCHENCK.

No. 3.

Mr. Fish to General Schenck.—(*Communicated to Earl Granville by General Schenck, March* 14, 6 P.M.)

Sir, *Department of State, Washington, February* 27, 1872.

I HAVE laid the note from Earl Granville, addressed to you, bearing date the 3rd February instant, before the President, who directs me to say that he sincerely desires to

promote that firm and abiding friendship between the two nations to which the note so happily refers.

It was under the inspiration of such sentiments that he accepted the invitation of Her Majesty's Government for the establishment of a Joint High Commission to treat and discuss the mode of settling certain questions referred to therein, and suggested on his own part that the proposed Commission should also have authority to consider the removal of the differences which arose during the rebellion in the United States, growing out of the acts committed by the vessels which have given rise to the claims generically known as the "Alabama Claims."

It was his earnest hope that the deliberations of the Commission would result in an acceptance by Her Majesty's Government of the proposition, submitted by his direction, that a gross sum be agreed upon and paid to the United States, as an amicable settlement of all claims, of every description, arising out of such differences, instead of the lengthened controversy and litigation which he foresaw must attend any plan of arbitration. He was the more solicitous that such an amicable settlement, without the intervention of third parties, should be adopted, because he feared that so thorough and comprehensive a presentation before the Tribunal of Arbitration of the matters of law and of fact on which the claims of this country rest, as it would be his duty to cause to be made, might for the moment revive past excitements and arouse unnecessary apprehensions, if not imperil those ties of international kindness and good-will he so much desires to strengthen and make perpetual.

The regret which he felt for the rejection by Her Majesty's Commissioners of the proposition for an amicable settlement is revived with great force by the necessity of this correspondence.

The proposition for a Joint High Commission, which was made by Her Majesty's Government, would not have received the approbation of the President had he supposed it was not to comprehend a consideration and adjustment of all the differences growing out of the acts of the cruizers, nor could he have given his sanction to the Treaty had it been suggested to him, or had he believed that any class of the claims which had been presented by this Government were excluded by the terms of submission from presentation on the part of this Government to the Tribunal of Arbitration. It was, in his appreciation, the chief merit of the mode of adjustment adopted by the Commission, that it was on both sides a frank, full, and unreserved surrender to impartial arbitrament, under the rules therein prescribed, of everything that had created such differences.

Whatever degree of importance might here or there be attached to any of these complaints, the President desired and intended, as had the American Commissioners, that all, of every form and character, should be laid before the Tribunal for its final and absolute disposition, either by recognition and settlement, or by rejection, in order that in the future the harmony of personal and political intercourse between the two countries might never again be disturbed by any possible phase of the controversy.

In his opinion, since entry upon a thorough trial of the issues which divide the two Governments could not be avoided, the claims for national or indirect losses (referred to in the note of Earl Granville), as they are put forward by this Government, involve questions of public law which the interest of both Governments requires should be definitely settled.

Therefore it is with unfeigned surprise and sincere regret that the President has received the intimation conveyed in Earl Granville's note, that Her Majesty's Government hold that it is not within the province of the Tribunal of Arbitration to decide upon certain claims for indirect losses and injuries. His Lordship, however, does not assign any reason for the opinion that losses and injuries with respect to which there has been no concealment—which were presented to the British negotiators at the opening of the discussion in precisely the same manner as they are put forward in the "Case," not as claims for which a specific demand was made, but as losses and injuries consequent upon the acts complained of, and necessarily to be taken into equitable consideration in a final settlement of all differences between the two countries—which remained unchallenged through the entire negotiations, and not relinquished in the Treaty, but covered by one of its alternatives, are not within the jurisdiction of the Arbitrators.

Unadvised as to the reasoning which has brought Her Majesty's Government to the opinion stated by Lord Granville, the President is unable to adopt it, but being convinced of the justice of his views, that the Treaty contemplated the settlement of all the claims of the United States, is of the opinion that he could not abandon them except after a fair decision by an impartial arbitration. He seeks no meaning in the Treaty which is not patent on its face; he advances no pretensions at Geneva which were not put forth pending the negotiations at Washington.

This Government knows not where to find the meaning or the intent of the Treaty unless within the Treaty itself.

The object of the Treaty, as declared in its preamble, was "to provide for an amicable settlement of all causes of difference between the two countries;" but the Treaty is not, of itself, the settlement,—it is an agreement between the Governments as to the mode of reaching a settlement, and its Article XI engages the Contracting Parties to consider the result of the arbitration as a full, perfect, and final settlement of all the claims. Until that be reached, no proffer of withholding an estimate of the indirect losses, dependent on the hope of an amicable settlement, can be claimed as a waiver or an estoppel.

The first Article recites that differences have arisen between the two Governments, and still exist, and provides, "in order to remove and adjust all complaints and claims on the part of the United States, that all the claims growing out of acts committed by the aforesaid vessels, and generically known as the 'Alabama Claims,'" be referred to a Tribunal of Arbitration, to be composed as therein provided. There is no limitation or restriction to any part or description of the claims. All the claims growing out of certain acts, and generically known as the "Alabama Claims," were referred. What they were, is a question of fact and of history. Which of them are well founded is a question for the Tribunal of Arbitration.

What are called the indirect losses and claims are not now put forward for the first time. For years they have been prominently and historically part of the "Alabama Claims."

It would be superfluous to quote, or perhaps even to refer to, particular passages in the published instructions of this Government to their Minister to Great Britain, in the notes of that Minister to Her Majesty's Principal Secretary of State for Foreign Affairs, or in other public papers, to show that the expectation of this Government has, from the beginning of the acts which gave rise to the "Alabama Claims," been that the British Government would indemnify the United States. Incidental or consequential damages were often mentioned as included in the accountability.

In the progress of the acts which gave rise to the claims, high British authority was not wanting to warn Her Majesty's Government in the House of Commons that "they had been inflicting an amount of damage on that country (the United States) greater than would be produced by many ordinary wars," and to indicate, as part of that damage, the losses to whose presentation exception is now taken.

Public men in both countries discussed them, while the public press on the one side and on the other advanced and combatted them with an earnestness and warmth that brought them into a prominence beyond the direct losses and injuries sustained by individuals. A detailed statement of their claims, enumerating and setting forth the indirect losses, precisely as they are advanced in the Case, was submitted by the American negotiators to the Joint High Commission on the first discussion of the claims on the 8th day of March, and appears in the Protocol approved on the 4th day of May.

Her Majesty's Government therefore, cannot, in the absence of any specific exclusion of these damages by the Treaty, be said to be taken unawares by their presentation to the Tribunal, and the President was not at liberty to regard as withdrawn or settled any of the claims enumerated in a Statement prepared and approved by the Joint High Commission after their discussions were closed, and within four days of the signing of a Treaty which declares that the differences which had arisen with respect to the "Alabama Claims" still exist. Appearing thus, from whatever cause, not to have been eliminated from the enumerated claims of the United States, the President had not the power of his own accord to withhold them from the Case to be presented to the Tribunal of Arbitration; but in frankness and in sincerity of purpose to remove, in the spirit of the Treaty, all causes of difference between the two Governments, he has set them forth before the Geneva Tribunal, content to accept any award that the Tribunal may think fit to make on their account.

It is within your personal knowledge that this Government has never expected or desired any unreasonable pecuniary compensation on their account, and has never entertained the visionary thought of such an extravagant measure of damages as finds expression in the excited language of the British Press, and seems most unaccountably to have taken possession of the minds of some even of the Statesmen of Great Britain.

A Mixed Commission is now in session in this city, under the Treaty, to which are referred all claims of citizens or subjects of either Powers (other than "Alabama claims") which arose out of acts committed during a specified period.

In the correspondence which preceded the agreement for the meeting of the Joint High Commission which negotiated the Treaty, language was purposely agreed upon and used to express the idea which the Representatives of the two Governments entertained,

that no claim founded on contract, and especially no claim on account of the Rebel or Confederate cotton debt, was to be presented. Similar language, and for the same avowed and admitted purpose, was used in the Treaty.

Among other claims of an unexpected character presented by the agent of the British Government, there was one for a part of the Confederate debt which is understood to be held in Great Britain to the extent of many millions. Immediately on its presentation the United States remonstrated and requested the British Government to instruct their agent to withdraw that claim. Their remonstrance was unheeded; their request was not answered. If any instruction was given this Government was not informed thereof, and it failed to be observed; and the claim was pressed to argument. The United States demurred before the Commission to its jurisdiction over claims of that description, and the decision of the Commission disposed of the case adverse to the claimant.

The attitude of the two Governments is now reversed, with the difference in favour of the United States, that there was no question raised as to the understanding of both Governments at the date of the Treaty, with reference to the exclusion of claims of the character then presented.

The United States seek not to be the judges in their own case.

The course which they pursued afforded a happy solution to what might have been a question of embarrassment.

They desire to maintain the jurisdiction of the Tribunal of Arbitration over all the unsettled claims, in order that being judicially decided, and the questions of law involved therein being adjudicated, all questions connected with or arising out of the "Alabama claims," or "growing out of the acts" of the cruisers, may be for ever removed from the possibility of disturbing the perfect harmony of relations between the two countries. The President regrets that there should be any difference of opinion between the two Governments on any question connected with the Treaty.

He indulges, however, the earnest hope that the disposition which has been equally manifested by both Governments to remove all causes of difference between them will bring them to an agreement upon the incidental question which has arisen, and will allow no obstacle to deprive the world of the example of advanced civilization presented by two powerful States, exhibiting the supremacy of law and of reason over passions, and deferring their own judgments to the calm interpretation of a disinterested and discriminating Tribunal.

I am, &c.
(Signed) HAMILTON FISH.

No. 4.

Earl Granville to General Schenck.

Sir, *Foreign Office, March* 20, 1872.

I HAVE laid before my colleagues Mr. Fish's despatch of the 27th ultimo, of which, at my request, and authorized by your Government, you gave me a copy on the 14th instant.

Her Majesty's Government recognize with pleasure the assurances of the President that he sincerely desires to promote a firm and abiding friendship between the two nations; and, animated by the same spirit, they gladly avail themselves of the invitation which your Government appear to have given, that they should state the reasons which induced them to make the declaration contained in my note to you of the 3rd ultimo, and which I then purposely omitted, in the hope of obtaining, without any controversial discussion, the assent of the Government of the United States.

Mr. Fish says, "What are called the indirect losses and claims are not now put forward for the first time. For years they have been prominently and historically part of the 'Alabama claims.' It would be superfluous to quote, or perhaps even to refer to, particular passages in the published instructions of this Government to their Minister to Great Britain, in the notes of that Minister to Her Majesty's Principal Secretary of State for Foreign Affairs, or in other public papers, to show that the expectation of this Government has, from the beginning of the acts which gave rise to the 'Alabama claims,' been that the British Government would indemnify the United States. Incidental or consequential damages were often mentioned as included in the accountability." This assertion does not appear to me accurately to represent the facts as they are shown in the correspondence between the two Governments. It is true that in some of the earlier

letters of Mr. Adams vague suggestions were made as to possible liabilities of this country extending beyond the direct claims of American citizens for specific losses arising from the capture of their vessels by the Alabama, Florida, Shenandoah, and Georgia; but no claims were ever defined or formulated, and certainly none were ever described by the phrase "Alabama claims" except these direct claims of American citizens.

No mention of any claim for national or indirect losses had been made during the negotiation commencing with Mr. Seward's despatch to Mr. Adams, dated the 27th of August, 1866, and ending with the signature of the Convention of the 10th of November, 1868, by Lord Stanley and Mr. Reverdy Johnson, by the IVth Article of which power was given to Commissioners "to adjudicate upon the class of claims referred to in the official correspondence between the two Governments as the 'Alabama claims.'"

The first subsequent mention of any claim for national losses was in a communication, unauthorized by his Government, made by Mr. Reverdy Johnson, in March 1869, to Lord Clarendon, in which he suggested that the terms of the Convention signed by him with Lord Clarendon, on the 14th of January, which comprised a reference to a Mixed Commission of the "Alabama claims," should be enlarged so as to include all claims on the part of either Government upon the other, an essential condition of the proposal being, that in case a claim was set up by the United States, founded on the recognition of the Confederate States as belligerents, it should be open to the British Government to advance claims on their part such as a claim for injury to British interests by the assertion and exercise of belligerent rights by the United States upon British commerce.

Lord Clarendon at once declined to entertain this suggestion.

In Mr. Fish's despatch of the 25th of September, 1869, the Government of the United States intimated that they considered there might be grounds for some claims of a larger and more public nature, though they purposely abstained at that time from making them; but the grounds indicated were not limited to the acts of the Alabama and other similar vessels, or to any mere consequences of such acts, nor were these public claims then described or referred to in any manner as "Alabama claims." That expression the "Alabama claims," which first occurs in a letter from Mr. Seward to Sir F. Bruce of the 12th of January, 1867, had always been used in the correspondence between the two Governments to describe the claims of American citizens on account of their own direct losses by the depredations of the Alabama and other similar vessels, and had never been employed to describe, or been treated as comprehending, any public or national claims whatever of the Government of the United States.

Down, therefore, to the time when Her Majesty's Government proposed the appointment of a Joint High Commission to settle the Fishery Question and all other questions affecting the relations of the United States towards Her Majesty's possessions in North America, no actual claim against Her Majesty's Government had been formulated or notified on the part of the United States, except for the capture or destruction of property of individual citizens of the United States by the Alabama and other similar vessels.

When Her Majesty's Government consented, at the request of the Government of the United States, that the "Alabama claims" should be dealt with by the High Commission, it was in the full confidence that the phrase "Alabama claims" was used by the United States' Government in the same sense as it had been used throughout the previous correspondence and in the Conventions signed by Lord Stanley and Lord Clarendon.

National claims of an indirect character, such as those referred to in Mr. Fish's despatch, could not be comprehended under the term "claims generically known as the Alabama claims." The possibility of admitting as a subject of negotiation any claim for indirect national losses has never been entertained in this country; and it was therefore without the slightest doubt as to such claims being inadmissible that the British High Commissioners were appointed and proceeded to Washington.

At a meeting of the British and United States' High Commissioners on the 8th of March, the latter, after a general statement of the claims of the United States, proceeded to say that, in the hopes of an amicable settlement, no estimate was made of indirect losses, without prejudice, however, to the right of indemnification on their account, in the event of no such settlement being made; and they afterwards proposed, by direction of the President, that "the Joint High Commission should agree upon a sum which should be paid by Great Britain to the United States, in satisfaction of all the claims and the interest thereon."

Mr. Fish says that the President earnestly hoped that the deliberations of the Commission would have resulted in an acceptance by Her Majesty's Government of this proposition.

Her Majesty's Government cannot understand upon what this hope was founded.

The position which the Government of this country have maintained throughout all

the negotiations has been that they were guilty of no negligence in respect of the escape of the Alabama and the other vessels, and have therefore incurred no liability for any payment, and they still maintain this position.

The only ground on which Her Majesty's Government could be asked to pay any sum would have been an admission on their part that there had been such negligence as rendered them justly liable to pay a sum in compensation. This would have been an absolute surrender of the position which has always been held by this country, and a confession, which never could have been expected from them, that they had been guilty of negligence. Her Majesty's High Commissioners, therefore, could only declare at once that a proposal of an "amicable settlement" in this particular form could not be entertained.

Her Majesty's High Commissioners, on the part of this country, immediately made a counter-proposal, namely, the proposal of arbitration, and this proposal, after being to a certain extent modified on the suggestion of the United States' High Commissioners, was accepted by them.

The modification suggested by the United States' High Commissioners, and accepted by those of Great Britain, was a concession of no slight importance on the part of this country, namely, that the principles which should govern the Arbitrators in the consideration of the facts should be first agreed upon, and this concession was very materially enhanced when, in order to strengthen the friendly relations between the two countries and make satisfactory provision for the future, they further agreed that these principles should be those contained in the Rules in the VIth Article of the Treaty; for they thus accepted the retroactive effect of rules to which, nevertheless, they felt bound to declare that they could not assent as a statement of principles of international law in force at the time when the "Alabama claims" arose.

The friendly spirit of Her Majesty's Government was further shown by their authorizing Her Majesty's High Commissioners to express the regret felt by Her Majesty's Government for the escape, under whatever circumstances, of the Alabama and the other vessels from British ports, and for the depredations committed by those vessels, and by their agreeing that this expression of regret should be formally recorded in the Treaty.

Nor did Her Majesty's Government object to the introduction of claims for the expense of the pursuit and capture of the Alabama and other vessels, notwithstanding the doubt how far those claims, though mentioned during the Conferences as direct claims, came within the proper scope of the arbitration. They acquiesced in the proposal to exclude from the negotiations their claims on behalf of Canada against the United States for injuries suffered from Fenian raids—an acquiescence which was due partly to a desire on their part to act in a spirit of conciliation, and partly to the fact, stated by Her Majesty's High Commissioners, that a portion of these claims was of a constructive and inferential character.

The importance of these concessions must not be underrated. Nor can it have been expected by the Government of the United States that concessions of this importance would have been made by this country if the United States were still to be at liberty to insist upon all the extreme demands which they had at any time suggested or brought forward.

Her Majesty's Government considered themselves justified in treating the waiver of indirect claims, in the event of an amicable settlement, proffered by the High Commissioners of the United States, as one which applied to any form of amicable settlement, and therefore comprised, in like manner, the form of amicable settlement proposed by the British High Commissioners, accepted on the part of the United States, and recognized in the preamble of the Treaty.

Such a waiver was, in fact, a necessary condition of the success of the negotiation.

It was in the full belief that this waiver had been made that the British Government ratified the Treaty.

Her Majesty's Government are anxious that the considerations which made them hold this belief should be more fully explained to the Government of the United States than can be done in the form of a letter, and I have accordingly embodied them in a Memorandum which I have the honour to inclose, and which I beg may be read with, and considered as part of, my present communication.

Her Majesty's Government do not deny that it is as competent for the Government of the United States as it is for themselves to assert that their own interpretation of the Treaty is the correct one. But what Her Majesty's Government maintain is, that the natural and grammatical construction of the language used in the Treaty and Protocols is in accordance with the views which they entertain, and sustains their assertion that the terms of reference to the Arbitrators are limited to direct claims, inasmuch as direct

claims only have throughout the correspondence been recognized and repeatedly defined under the name of the "Alabama claims."

There are some passages in Mr. Fish's despatch in which he defends the introduction into the American Case of the claims for indirect losses and injuries, which I cannot allow to pass without more special remark.

It is stated that they are put forward in the Case not as claims for which a specific demand is made, but as losses and injuries consequent upon the acts complained of, and necessarily to be taken into equitable consideration in a final settlement of all differences between the two countries, and as not relinquished in the Treaty, but covered by one of its two alternatives.

Her Majesty's Government do not perceive what "alternative" in the Treaty can cover these claims.

If, indeed, by this language Mr. Fish is to be understood as referring to the two different modes provided by Articles VII and X of the Treaty, for arriving at the amount of the payment to be made by Great Britain in the event of any liability being established, the answer seems obvious, viz., that these alternatives are applicable only to the settlement of the amount of damages, and not to the measure of liability.

Again, Mr. Fish states that the Treaty was not an amicable settlement, but only an agreement between the Governments as to the mode of reaching a settlement, and that no proffer of withholding an estimate of indirect losses can be claimed as a waiver until the result of the arbitration is arrived at; but he overlooks the fact that the Treaty is called an amicable settlement, not merely in relation to the "Alabama claims," but as an entirety; and even in relation to the "Alabama claims" alone, it must clearly be taken that the amicable settlement which it professed to provide was arrived at from the moment when the Treaty containing the agreement to go to arbitration upon the claims was signed and ratified. If, according to Mr. Fish's view, an amicable settlement upon a reference to arbitration can only be arrived at by an adjudication of the claims, it is obvious that no waiver of any such claims could, under such circumstances, ever be made, for before the time for waiver (on this supposition) had arrived, the claims would already have been decided upon.

That Her Majesty's Government never intended to refer these claims to arbitration, and that, in ratifying the Treaty, they never contemplated their being revived in the argument before the Arbitrators, must have been obvious to you from the language used in the debate in the House of Lords on the 12th of June, on the motion for an address to the Queen, praying Her Majesty to refuse to ratify the Treaty.

On that occasion I distinctly stated this to be the understanding of Her Majesty's Government, and quoted the very Protocol of the 4th of May, to which I have referred above, as a proof that these indirect claims had "entirely disappeared." When Lord Cairns, to whose speech allusion has been made in the United States' Case, subsequently said that extravagant claims might be put in and take their chance, he was met with expressions of dissent. Moreover, Lord Derby, while criticizing the negotiation and the terms of the Treaty in other respects, particularized the withdrawal of indirect claims. "The only concession," he said, "of which I can see any trace upon the American side, is the withdrawal of that utterly preposterous demand that we should be held responsible for the premature recognition of the South as a belligerent Power, in company with that equally wild imagination, which, I believe, never extended beyond the minds of two or three speakers in Congress, of making us liable for all the constructive damages to trade and navigation which may be proved or supposed to have arisen from our attitude during the war."

I observed that you were present in the House of Lords on that occasion, and you informed me in January that you were present during the speeches of Lord Russell and myself, and that you communicated the next day the full newspaper report of the debate to your Government.

Sir S. Northcote, in the House of Commons, repeated, in other words, the substance of my remarks on the limitation of the terms of reference; and as his speech is printed in the papers on Foreign Relations recently laid before Congress, it must also have been reported to your Government. But neither on the occasion of my speech nor of his, nor when the ratifications of the Treaty were exchanged on the 17th of June, did you call my attention to the fact that a different interpretation was placed on the Treaty and Protocol by Her Majesty's Government and the Government of the United States; nor, so far as Her Majesty's Government are aware, was their interpretation, thus publicly expressed, challenged either by the Statesmen or the public press of the United States.

Her Majesty's Government must therefore confess their inability to understand how

the intimation contained in my note of the 3rd February last can have been received by the President with surprise.

Mr. Fish urges that the claims for national indirect losses which have been put forward on behalf of his Government involve questions of public law which the interest of both Governments requires should be definitely settled.

Her Majesty's Government agree with Mr. Fish that it is for the interest of both countries that the rights and duties of neutrals upon some of the points hitherto thought open to serious controversy should be definitely settled, and had hoped that such a settlement had been secured by the Rules to which they have given their assent; but they cannot see that it would be advantageous to either country to render the obligations of neutrality so onerous as they would become if claims of this nature were to be treated as proper subjects of international arbitration.

Whatever construction may be placed upon the Ist Article of the Treaty, it is impossible to sever the terms of reference therein contained from the Rules in the VIth Article; and the measure of liability under the Arbitration, therefore, will be the measure of liability incurred by any neutral State which, after acceding to these Rules, may "by any act or omission" fail to fulfil any of the duties set forth in them.

The United States and Great Britain have bound themselves by the Treaty to observe these Rules as between themselves in future.

They have, moreover, bound themselves to bring these Rules to the knowledge of other maritime Powers, and to invite them to accede to them. Could it have been expected that those Powers would accept a proposal which might entail upon a neutral such an unlimited liability and, in some instances, might involve the ruin of a whole country?

Her Majesty's Government cannot for themselves accept such a liability, nor recommend the acceptance of it to other nations.

Are the Government and people of the United States themselves prepared to undertake the obligation of paying to an aggrieved belligerent the expenses of the prolongation of the war, and other indirect damages, if, when the United States are neutral, they can be shown to have permitted the infringement of any one, or part of any one, of the three Rules through a want of due diligence on the part of their executive officers?

To attach such tremendous consequences to an unintentional violation of neutrality—it might be by a single act of negligence—would be to strike a heavy blow at the interests of peace; for war has scarcely any consequences more formidable to a belligerent than those which might thus be incurred by a neutral; and, while war offers a chance of gain, neutrality would, if such claims as these were once admitted, present without any such compensation the risk of intolerable loss.

With respect to the disclaimer made by Mr. Fish of any expectation or wish, on the part of the United States' Government, to obtain any "unreasonable pecuniary compensation" on account of these indirect claims, I think it sufficient here to observe that, on the question of amount, the British people and Government have necessarily been obliged to look to the nature and grounds of the claims as they are stated in the Case of the United States, and have, of course, been unable to form a judgment from any other data of the expectations of those by whom the claims are advanced. If these claims could be considered as well-grounded in principle, it appears to Her Majesty's Government to be capable of demonstration that the magnitude of the damages which might be the result of their admission is enormous. The grounds of these views are more fully stated in the Third Part of the inclosed Memorandum.

Mr. Fish has appealed to the proceedings at the Washington Claims Commission in connection with the Confederate cotton claims. Her Majesty's Government must, however, observe that there is no analogy between the two cases, as, by the Treaty, the Washington Commission has power "to decide in each case whether any claim has or has not been duly made, preferred, and laid before them, either wholly, or to any and what extent, according to the true intent and meaning of the Treaty;" no similar words being used as to the powers of the Geneva Tribunal.

It is the function of the Washington Commission to decide upon a variety of general claims, not of one kind, nor limited or defined beforehand, and Her Majesty's Agent was instructed that his duty would *primâ facie* be, to present such claims as private individuals might tender for that purpose for acceptance or rejection by the Commission; Her Majesty's Government not intending to make themselves responsible either for the merits of the particular claims or for the arguments by which they might be supported The jurisdiction of the Geneva Tribunal was limited to one particular class and description. of claims.

The facts are as follows:—

On the 11th of November, in pursuance of the general instructions which had been given to Her Majesty's Agent, a claim upon a bond issued by the so-called Confederate States for a sum forming part of a loan called the "Cotton Loan," contracted by those States, and for the payment of which certain cotton seized by the United States was alleged to have been hypothecated by the Confederate Government, was filed at Washington; and on the 21st I learnt from you that the United States' Government objected to claims of this kind being even presented.

Some delay took place in consequence of unavoidable causes with some of which you are well acquainted. And there were others, such as the necessity not only of communicating with my colleagues but with Sir E. Thornton, and of considering how far, under the same general description, there might be included claims substantially different. The despatches from Her Majesty's Agent giving the details of the nature of the claim, and of the demurrer made to it by the United States' Agent, did not reach me until the 6th of December. I had in the meantime ascertained from Sir E. Thornton that the expression "acts committed" had been used by mutual agreement in the negotiations which preceded the appointment of the High Commission with a view to exclude claims of this class from the consideration of the High Commissioners; those words being also used in the XIIth Article of the Treaty with regard to private claims. The question was brought before the Cabinet at its next meeting on the 11th, and was finally decided on the 14th, as recorded in a minute by Mr. Gladstone. This decision was, that the Confederate cotton claims should not be presented unless in the case of bonds exchanged for cotton, which had thereby become the actual property of the claimants, and directions were given for a despatch to be sent to this effect, and on the 16th I informed you that you might write to Mr. Fish that Her Majesty's Agent would be instructed not to present any claims that did not come within the provisions of the Treaty.

Although it appears that the understanding need not necessarily have extended beyond the rejection by the Commissioners of the claims, under the XIVth Article, by which the Commissioners have power to decide whether any claim is preferred within the true intent and meaning of the Treaty (as was done with various claims under a similar Article in the Claims Conventions of 1853), Her Majesty's Government acceded to the construction which the United States' Government had put upon that understanding.

Mr. Fish will observe the feeling by which Her Majesty's Government were guided in coming to their decision on the 14th. They desired to put the most favourable construction upon any understanding which the United States' Government might have supposed to exist.

Information reached me the next morning by telegraph of the adjudication, which Her Majesty's Government had not expected to take place, upon the merits of the claim by the Commissioners. This required a reconsideration of the instructions, and fresh instructions were sent by the mail of the 23rd, and also by telegraph, to Sir E. Thornton to arrange with Mr. Fish that the presentation of claims which appeared to be manifestly without the terms of the Treaty should be withheld, and that when Her Majesty's Agent was of opinion that a claim belonged to a class that ought not to be presented, it would be desirable that an agreement to that effect should be made and signed by Sir E. Thornton and Mr. Fish. These instructions were communicated to Mr. Fish.

Her Majesty's Agent has since acted in accordance with the decision of the Cabinet of the 14th of December. New claims of the like character have been tendered to him by parties who were unwilling to acquiesce in the decision of the Commissioners as applicable to their own cases, but which claims, under instructions from Her Majesty's Government, have not been presented.

I have now placed in your hands, for examination by the Government of the United States, a statement of the reasons which, in the opinion of Her Majesty's Government, sufficiently show that claims for indirect losses are not within the meaning of the Treaty; that they were never intended to be included by Her Majesty's Government; that this was publicly declared before the ratification, when the error, if any, might have been corrected; that such claims are wholly beyond the reasonable scope of any Treaty of Arbitration whatever; and that to submit them for decision by the Tribunal would be a measure fraught with pernicious consequences to the interests of all nations, and to the future peace of the world.

I appreciate the desire substantially, if indirectly, expressed by the Government of the United States, to be advised of the reasons which have prompted the declaration made by me on behalf of Her Majesty's Government on the 3rd of February, no less than the friendly and courteous language which has been employed by the United States' Secretary of State. The present letter is intended by Her Majesty's Government, not as the commencement of a diplomatic controversy, but as an act of compliance with that most

reasonable desire. They are sure that the President will be no less anxious than they are that the conduct of both Governments should conform to the true meaning and intent of the instrument they have jointly framed and signed, whether that meaning be drawn from the authoritative documents themselves, or from collateral considerations, or from both sources combined.

Entertaining themselves no doubt of the sufficiency of the grounds on which their judgment proceeds, they think it the course at once most respectful and most friendly to the Government of the United States to submit those grounds to their impartial appreciation. Her Majesty's Government feel confident that they have laid before the President ample proof that the conclusion which was announced by me on the 3rd of February, and to which I need hardly say that they adhere, cannot be shaken.

I have, &c.
(Signed) GRANVILLE.

Inclosure in No. 4.

Memorandum.

PART I.—ON THE WAIVER OF CLAIMS FOR INDIRECT LOSSES CONTAINED IN THE 36TH PROTOCOL.
PART II.—ON THE CONSTRUCTION OF THE TREATY.
PART III.—ON THE AMOUNT OF THE CLAIMS FOR INDIRECT LOSSES.

PART I.—*On the Waiver of Claims for Indirect Losses contained in the 36th Protocol.*

THE first Protocol of the Conferences of the High Commission begins with a recital of the powers of the British Commissioners, stating Her Majesty's purpose in their appointment to be, to "discuss in a friendly spirit with Commissioners to be appointed by the Government of the United States the various questions on which differences had arisen between Great Britain and that country," and to "*treat for an agreement as to the mode of their amicable settlement.*"

The Protocol of the 4th of May recounts that the American Commissioners stated, on the 8th of March, "that the history of the 'Alabama' and other cruizers which had been fitted out, or armed, or equipped, or which had received augmentation of force in Great Britain or in her Colonies, and of the operations of those vessels, showed (1) extensive *direct losses* in the capture and destruction of a large number of vessels with their cargoes, and in the heavy national expenditures in the pursuit of the cruizers; and (2) *indirect injury* in the transfer of a large part of the American commercial marine to the British flag, in the enhanced payments of insurance, in the prolongation of the war, and in the addition of a large sum to the cost of the war and the suppression of the rebellion; and also showed (3) that Great Britain, by reason of failure in the proper observance of her duties as a neutral, had become justly *liable for the acts of those cruizers and of their tenders;* that the *claims* for the loss and destruction of private property which had thus far been presented amounted to about 14,000,000 dollars, without interest, which amount was liable to be greatly increased by *claims* which had not been presented; that the cost to which the Government had been put in the pursuit of cruizers could easily be ascertained by certificates of Government accounting officers; that, in the hope of *an amicable settlement,* no estimate was made of the *indirect losses,* without prejudice, however, to *the right to indemnification on their account* in the event of *no such settlement* being made.

"The American Commissioners further stated that they hoped that the British Commissioners would be able to place upon record an expression of regret by Her Majesty's Government for the depredations committed by the vessels whose acts were now under discussion. They *also proposed* that the Joint High Commission should agree upon a sum which should be paid by Great Britain to the United States, in satisfaction of *all the claims* and *the interest thereon.*"

The British Commissioners abstained "from replying in detail to the statement of the American Commissioners in the hope that the necessity for entering upon a lengthened controversy might be obviated by the adoption of *so fair a mode of settlement* as that which they were instructed to propose; and they had now to repeat, on behalf of their Government, the offer of arbitration.

"The American Commissioners expressed their regret at this decision of the British

Commissioners, and said further that *they could not consent to submit the question of the liability of Her Majesty's Government to arbitration, unless* the principles which should govern the Arbitrator in the consideration of the facts could be first agreed upon."

These principles were subsequently discussed and agreed upon, and incorporated in the Draft of the VIth Article of the Treaty.

On the 6th of May, the Commissioners met for their final Conference, and Lord de Grey said that "it had been most gratifying to the British Commissioners to be associated with colleagues who were animated with the same sincere desire as themselves to bring about *a settlement* equally honourable and just to both countries."

Mr. Fish replied that "from the first Conference the American Commissioners had been impressed by the earnestness of desire manifested by the British Commissioners to reach *a settlement worthy of the two Powers.* . . . His colleagues and he could never cease to appreciate the generous spirit and the open and friendly manner in which the British Commissioners had met and discussed the several questions that had led to the conclusion of *the Treaty, which it was hoped* would receive the approval of the people of both countries, and *would prove the foundation of a cordial and friendly understanding* between them for all time to come."

Two days afterwards the Treaty was signed with the following Preamble:—

"Her Britannic Majesty and the United States of America, being desirous to provide for *an amicable settlement* of all causes of difference between the two countries, have, for that purpose, appointed their respective Plenipotentiaries. . . . And the said Plenipotentiaries, after having exchanged their full powers, which were found to be in due and proper form, *have agreed* to and *concluded* the following Articles."

In the view of Her Majesty's Government the statement made by the American Commissioners on the 8th of March contained a waiver of the claims for indirect losses contingent on an "amicable settlement" being arrived at; and this waiver consisted of two parts:—

First, the affirmative statement that "in the hope of an amicable settlement no estimate was made of the indirect losses." The words "in the hope of an amicable settlement" are in themselves grammatically general, and, unless qualified by a subsequent limitation, mean, in the hope of any such settlement as the parties shall acknowledge to fall under the phrase "amicable settlement." Now, this part of the waiver, being a declaration in which the other party had an interest, and, so far, of the nature of a promise, could only be so limited by an express specification following it immediately, or at least before the other party had taken any step in reliance on its general character. But no such specification was made; nor does any specification at all as to the particular form of settlement appear in the Protocol. The phrase consequently retains the general character above described as its literal and grammatical meaning.

It might be said that the concluding words of the phrase—"no estimate was made of the indirect losses"—had a special regard to the form of amicable settlement thereafter proposed by the American Commissioners, viz., the payment of a gross sum. This, however, can only be maintained subject to the qualification that, if the estimate of indirect losses was withheld in the hope that that proposal would be accepted, and if the view of the American Commissioners was that the acceptance of that proposal alone would constitute the "amicable settlement" in consideration of which the estimate of indirect losses was withheld, then the next step for them, when the proposal was declined, was to present that estimate; or, if not, then in some other specific manner to keep alive the claim. But they did neither; they did not intimate or give notice to the British Commissioners that their hope of an "amicable settlement" had been frustrated or disappointed; nor did they say anything to the effect of making this first portion of the waiver dependent on the rejected proposal. And thus the phrase "an amicable settlement" is left to stand in its original and grammatical generality.

The second part of the waiver is as follows:—

"Without prejudice, however, to the right of indemnification on their account [*i.e.*, on account of indirect losses] in the event of no such settlement being made." Its precise bearing obviously depends upon the meaning of the words "no such settlement."

Now the word "such" grammatically qualifies the word "settlement" by referring to the antecedent expression "amicable settlement." "Such," therefore, means "amicable;" and the right reserved by the American Commissioners is grammatically a right to revive the question of indirect losses *in the event of no amicable settlement being made;* and is nothing more.

It is to be observed that at this time no proposal whatever had been made for payment of a gross sum, or for any particular form or mode of settlement.

The only remaining question is, whether the Treaty was itself "an amicable settle-

ment," or, which is the same thing for the purposes of the argument, was *in ordine* towards an amicable settlement, and a step on the road to it.

This question is answered by the preamble of the Treaty, which declares that the President of the United States had (as well as Her Majesty) given his Commissioners certain powers "in order to provide for an amicable settlement" of certain differences, in which the "Alabama claims" were included; that these powers had been compared and verified; and that in virtue of them the Commissioners had agreed upon the Articles of the Treaty which are then set forth in order. The "amicable settlement" is here distinctly recognized not as a particular solution of the pending questions which had been proposed and set aside, but as an object of negotiation which had been provided for in a manner satisfactory to both parties, and the provision for which was embodied in the Treaty. The reservation, therefore, made by the American Commissioners had not come into play; the waiver remained in full force; and the indirect losses were excluded by the preamble of the Treaty from the scope of the arbitration.

PART II.—*On the Construction of the Treaty of Washington.*

UPON the construction of the Treaty of Washington, apart from the Protocols, there appear to be three questions:—

First. What claims are described by the words, "*the claims generically known as the 'Alabama Claims?'*"

Second. What vessels are described by the words, "*the several vessels, which have given rise to the claims generically known as the 'Alabama Claims?'*"

Third. What claims are described by the words, "*all the said claims, growing out of acts committed by the aforesaid vessels, and generically known as the 'Alabama Claims?'*" (being the words in which the subject matter of the reference to arbitration agreed upon, is defined).

Each of these questions will be examined separately.

1. What claims are described by the words, "the claims *generically known* as the 'Alabama Claims?'"

The word "known," signifies, that this collective expression had acquired a definite sense, supposed to be mutually understood, from its use in previous communications, between the same parties.

The word "generically," naturally signifies that all the claims intended were *ejusdem generis*.

The word "claims," itself naturally signifies demands actually presented or notified, either with or without a full specification of particulars.

The diplomatic correspondence, which preceded the negotiation, must therefore be referred to, to discover, first, what demands had been presented, or notified; and secondly, what had been the previous use of the phrase "the 'Alabama Claims?'"

The earliest intimation of any claims against this country was in the letter of Mr. Adams to Lord Russell, of 20th November, 1862; which spoke "of the depredations committed on the high seas upon merchant-vessels" by the "Alabama," and of "the right of reclamation of the Government of the United States for the grievous damage done to the property of their citizens," by reason of the escape of that vessel from British jurisdiction: and which referred, in support of that alleged right, to the Treaty of 1794 between Great Britain and the United States, by which (as Mr. Adams inaccurately represented) "all cases of damage previously done by capture of British vessels or merchandize, by vessels originally fitted out in the ports of the United States," were agreed to be referred to a Commission, to award "the necessary sums for full compensation." He added, that he had received directions from his Government "to solicit redress for *the national and private injuries*, already *thus* sustained."

On the 19th February, 1863; 29th April, 1863; 7th July, 1863; 24th August, 1863; 19th September, 1863; and 23rd October, 1863, Mr. Adams presented to Lord Russell a series of definite claims made against the Government of this country by particular American citizens, in respect of ships and property belonging to them, said to have been destroyed by the "Alabama," intimating, in his letter of the 23rd October, that his Government "must continue to insist, that *Great Britain has made itself responsible for the damages which the peaceful, law-abiding citizens of the United States sustain by the depredations of the vessel called the 'Alabama.'*" He added (in an important passage containing the first suggestion of arbitration as a mode of thereafter solving the question), "In repeating this conclusion, however, it is not to be understood that the United States incline to act dogmatically, or in a spirit of litigation. They fully comprehend how unavoidably

reciprocal grievances must spring up from the divergence of the policy of the two countries in regard to the present insurrection. . . . For these reasons I am instructed to say, that they frankly confess themselves unwilling to regard the present hour as the most favourable to a calm and candid examination by either party of the facts, or the principles involved in cases like the one now in question. Though indulging a firm conviction of the correctness of their position *in regard to this and other claims*, they declare themselves disposed at all times, hereafter as well as now, to consider in the fullest manner all the evidence and the arguments which Her Majesty's Government may incline to proffer in refutation of it; and, in case of an impossibility to arrive at any common conclusion, I am directed to say, there is no fair and equitable form of conventional arbitrament or reference to which they will not be willing to submit. Entertaining these views, I crave permission to apprize your Lordship that I have received directions to continue *to present to your notice claims of the character heretofore advanced,* whenever they arise, and to furnish the evidence on which they rest, as is customary in such cases, in order to guard against possible ultimate failure of justice from the absence of it."

In a later letter of 31st October, 1863, Mr. Adams (while presenting other similar demands in respect of property destroyed by the "Florida"), spoke of "*the claims growing out of the depredations of the 'Alabama' and other vessels issuing from British ports.*"

On the 20th January, 1864, he presented another similar claim by the owners of the "Sea Bride," captured by the "Alabama." And at later dates the particulars were transmitted by him of certain claims made by persons whose property was alleged to have been destroyed by the "Shenandoah."

On the 7th April, 1865 (when the war was considered by him as actually or virtually at an end), Mr. Adams transmitted to Lord Russell certain reports of "depredations committed upon the commerce of the United States" by the "Shenandoah," and added, "Were there any reason to believe that the operations carried on in the ports of Her Majesty's Kingdom and its dependencies to maintain and extend this systematic depredation upon the commerce of a friendly people had been materially relaxed or prevented, I should not be under the painful necessity of announcing to your Lordship the fact, that *my Government cannot avoid entailing upon the Government of Great Britain the responsibility for this damage*,"—and he proceeded to speak of "the injury that might yet be impending from the part which the British steamer 'City of Richmond' had had in being suffered to transport with impunity from the port of London men and supplies, to place them on board of the French-built steam-ram 'Olinthe,' alias 'Stoerkodder,' alias 'Stonewall,' which had, through a continuously fraudulent process, succeeded in deluding several Governments of Europe, and in escaping from this hemisphere on its errand of mischief to the other." He then went on to complain that, by reason of a series of acts (*the furnishing of "vessels, armaments, supplies, and men"*), which he contended to be almost wholly attributable to Great Britain, or to British citizens, the entire maritime commerce of the United States was in course of being transferred, and had already to a large extent passed over, to Great Britain; whose recognition of the belligerent character of the insurgents he alleged to be the main and original source of all this mischief; adding, "In view of all these circumstances, I am instructed, whilst insisting on the protest heretofore solemnly entered against that proceeding" (*i.e.*, the recognition of Southern belligerency), "further respectfully to represent to your Lordship, that, in the opinion of my Government, the grounds on which Her Majesty's Government have rested their defence against the responsibility incurred in the manner hereinbefore stated, for the evils that have followed, however strong they might have hitherto been considered, have now failed, by a practical reduction of all the ports, heretofore temporarily held by the insurgents."

It is to be observed that, although the general injury to the commerce of the United States is largely referred to in this letter, Mr. Adams advances no new claim for compensation, on that or any other account (except for captures made by the "Shenandoah"), against Her Majesty's Government; he even intimates, that the particular claim for the captures by the "Shenandoah" would not then have been made, if his Government could have felt assured that no further operations of the like nature would take place.

This letter led to a prolonged controversial argument; in the course of which (on the 4th May, 1865) Lord Russell observed, that he could "never admit that the duties of Great Britain towards the United States were to be measured by the losses which the trade and commerce of the United States might have sustained," and said, "The question then, really comes to this: Is Her Majesty's Government to assume or be liable to a responsibility for conduct, which Her Majesty's Government did all in their power to prevent and to punish? A responsibility which Mr. Adams, on the part of the United States' Government in the case of Portugal, positively, firmly, and justly declined. Have you considered to what this responsibility would amount? Great Britain would become thereby answer-

able forevery ship, that may have left a British port, and have been found afterwards used by the Confederates as a ship of war: nay more, for every cannon and every musket used by the Confederates on board any ship of war, if manufactured in a British workshop." To which Mr. Adams replied (20th May, 1865) by a "recapitulation" of nine points, which he said he had desired to embody in his previous arguments. These points (beginning with the recognition of Southern belligerency on the high seas, and alleging this belligerency to have been in fact created, after the recognition, by means derived from Great Britain), mentioned, under the 7th head, "*the burning and destroying on the ocean a large number of merchant vessels and a very large amount of property belonging to the people of the United States.*"

The 8th and 9th heads were thus worded:—

"8. That, in addition to this direct injury, the action of these British-built, manned, and armed vessels has had the indirect effect of driving from the sea a large portion of the commercial marine of the United States, and, to a corresponding extent, enlarging that of Great Britain, thus enabling one portion of the British people to derive an unjust advantage from the wrong committed on a friendly nation by another portion.

"9. *That the injuries thus received* by a country, which has, meanwhile, sedulously endeavoured to perform all its obligations, owing to the imperfection of the legal means at hand to prevent them, as well as the unwillingness to seek for more stringent powers, *are of so grave a nature, as in reason and justice to constitute a valid claim for reparation and indemnification.*" Later on, in the same letter, Mr. Adams also said: "Your Lordship is pleased to observe, that you can never admit that the duties of Great Britain towards the United States are to be measured by the losses which the trade and commerce of the United States may have sustained. To which I would ask permission to reply, that no such rule was ever desired. The true standard for the measurement would seem to be framed on the basis of the clear obligations themselves, and the losses that spring from the imperfect performance of them;" and "thus it is, that, whatever may be the line of argument I pursue, I am compelled ever to return to the one conclusion: *the nation that recognized a Power as a belligerent before it had built a vessel, and became itself the sole source of all the belligerent character it has ever possessed on the ocean, must be regarded as responsible for all the damage that has ensued from that cause to the commerce of a Power*, with which it was under the most sacred of obligations to preserve amity and peace."

It will be seen that, although the general propositions of this letter might be wide enough to include the largest imaginable demands, it nevertheless abstains from putting forward any new claim in a definite or tangible form; and purports rather to recapitulate, and adhere to, the tenor of the preceding correspondence. And in this sense it was, evidently, understood by Lord Russell, who, in his answer of 30th August, 1865, referred to the suggestion of an arbitration contained in Mr. Adams' former letter of the 23rd of October, 1863; and, while declining "either *to make reparation and compensation for the captures made by the 'Alabama,'* or to refer the question to any foreign State," offered a reference to a Commission of "all claims arising during the late civil war," which the two Powers should agree to refer to the Commissioners. And again, on the 14th October, he repeated: "There are, I conceive, many claims upon which the two Powers would agree that they were fair subjects of investigation before Commissioners. But I think you must perceive that, *if the United States' Government were to propose to refer claims arising out of the captures made by the 'Alabama' and 'Shenandoah'* to the Commissioners, the answer of Her Majesty's Government must be in consistency with the whole argument I have maintained, in conformity with the views entertained by your Government in former times. I should be obliged, in answer to such a proposal, to say: For any acts of Her Majesty's subjects committed out of their jurisdiction and beyond their control, the Government of Her Majesty are not responsible, &c."

On the 21st of October, Mr. Adams addressed a long letter, with numerous inclosures, to Lord Russell, with reference to the "Shenandoah," alleging that vessel to have been received by the authorities at Melbourne with knowledge of an illegal equipment in this country; and insisting that, on that account, "*Her Majesty's Government assumed a responsibility for all the damage which it had done*, and which, down to the latest accounts, it was still doing, to the peaceful commerce of the United States on the ocean." A particular claim by the owners of a ship captured by the "Shenandoah," was presented with this letter.

In his letter to Lord Clarendon of the 21st November, 1865, Mr. Adams, under the instructions of his Government, declined Lord Russell's proposal for a limited reference to Commissioners of such claims as the two Governments could agree upon. "Adhering," he says, "as my Government does to the opinion *that the claims it has presented*, which his Lordship has thought fit at the outset to exclude from consideration, are just and

reasonable, I am instructed to say that it sees now no occasion for further delay in giving a full answer to his Lordship's propositions."

The whole result of this correspondence, down to the change of Administration in this country in 1866, may be thus summed up :—

1. That, notwithstanding continual complaints, extending over a vast range of subjects, from the recognition of the belligerency of the Southern States downwards, no "claims" against this country were ever defined, formulated, or presented on the part of the United States, except for the specific losses of American citizens arising from the capture of their vessels and property by the "Alabama," "Florida," and "Shenandoah;" and (2) that no such form of expression as "*the Alabama Claims*" had ever, down to this time, been used to describe even the claims in respect of those captures, much less to comprehend any more vague and indefinite demands of indemnity to the general mercantile or national interests of the United States.

On the accession of Lord Derby to power, Mr. Seward, in a despatch to Mr. Adams, dated the 27th August, 1866, thus defined the "claims" which it had been the object of the United States to press in the preceding correspondence, and of which he now again instructed Mr. Adams to urge the settlement :—"You will herewith receive a summary of *claims of citizens of the United States against Great Britain for damages which were suffered by them* during the period of our late Civil War and some months thereafter, *by means of depredations upon our commercial marine, committed on the high seas by the 'Sumter,' the 'Alabama,' the 'Florida,' the 'Shenandoah,' and other ships-of-war,* which were built, manned, armed, equipped, and fitted-out in British ports, and dispatched therefrom by or through the agency of British subjects, and which were harboured, sheltered, provided, and furnished, as occasion required, during their devastating career, in ports of the realm, or in ports of British Colonies in nearly all parts of the globe. *The Table is not supposed to be complete, but it presents such a recapitulation of the claims as the evidence so far received in this Department enables me to furnish. Deficiencies will be supplied hereafter.* Most of *the claims* have been from time to time brought by yourself, as the President directed, to the notice of Her Majesty's Government, and made the subject of earnest and continued appeal. That appeal was intermitted only when Her Majesty's Government, after elaborate discussions, refused *either to allow the claims or to refer them* to a Joint Claims Commission or to submit the question of *liability therein* to any form of arbitration. The United States, on the other hand, have all the time insisted upon *the claims* as just and valid. This attitude has been, and doubtlessly continues to be, well understood by Her Majesty's Government. The considerations which inclined this Government to suspend for a time the pressure of *the claims* upon the attention of Great Britain are these :—The political excitement in Great Britain, which arose during the progress of the war, and which did not immediately subside at its conclusion, seemed to render that period somewhat unfavourable to a deliberate examination of the very grave questions which *the claims* involve, &c. . . The principles upon which *the claims* are asserted by the United States have been explained by yourself in an elaborate correspondence with Earl Russell and Lord Clarendon. In this respect, there seems to be no deficiency to be supplied by this Department. . . . *It is the President's desire that you now call the attention of Lord Stanley to the claims* in a respectful but earnest manner, and inform him that, in the President's judgment, *a settlement of them has become urgently necessary* to a re-establishment of entirely friendly relations between the United States and Great Britain. *This Government, while it thus insists upon these particular claims,* is neither desirous nor willing to assume an attitude unkind or unconciliatory towards Great Britain. If on her part there are claims either of a commercial character, or of boundary, or of commercial or judicial regulation, which Her Majesty's Government esteem important to bring under examination at the present time, the United States would, in such case, be not unwilling to take them into consideration *in connection with the claims which are now presented on their part,* and with a view to remove at one time, and by one comprehensive settlement, all existing causes of misunderstanding."

Mr. Seward proceeded to recommend, in support of these claims, the use of the same general arguments (including prominently the alleged effect of the recognition of Southern belligerency, and the general injury to the national commerce of the United States), which had been previously so often employed by Mr. Adams. He added: "*The claims upon which we insist are of large amount. They affect the interest of many thousand citizens of the United States,* in various parts of the Republic. The justice of *the claims* is sustained by the universal sentiment of the people of the United States."

The claims specified in the inclosure to this despatch (which is headed, "*Summary of claims of citizens of the United States against Great Britain*"), relate exclusively to losses

sustained by the owners and insurers of divers ships and cargoes, captured by the "Alabama," the "Shenandoah," the "Florida," and the "Georgia," respectively.

This despatch having been communicated by Mr. Adams to Lord Stanley, his Lordship, through Sir F. Bruce (Lord Stanley to Sir F. Bruce, 30th November, 1866), called attention to what he supposed to be an accidental error of Mr. Seward, in mentioning the "Sumter;" which "did not proceed from a British port, but was an American vessel, and commenced her career by escaping from the 'Mississippi.'" Then, after dealing with Mr. Seward's general arguments, and declining to abandon the ground taken by former Governments, "so far as to admit the liability of this country for the claims then and now put forward," he expressed his sense of the "inconvenience which arose from the existence of unsettled claims of this character between two powerful and friendly Governments," and his willingness to adopt the principle of arbitration, provided that a fitting arbitrator could be found, and that an agreement could be come to as to the points to which arbitration should apply. He objected to refer to arbitration the question of the alleged premature recognition of the Confederate States as a belligerent; saying "the act complained of, *while it bears very remotely on the claims now in question,* is one, as to which every State must be held to be the sole judge of its duty." In another despatch to Sir F. Bruce, of the same date, he says, "I have confined myself exclusively to the consideration of *the American claims, put forward in Mr. Seward's despatch to Mr. Adams of the 27th August, and arising out of the depredations committed on American commerce by certain cruizers* of the Confederate States. But, independently of these claims, *there may,* for aught Her Majesty's Government know, *be other claims on the part of American citizens,* originating in the events of the late civil war, while there certainly are very numerous British claims, arising out of those events, which it is very desirable should be inquired into and adjusted between the two countries . . . . The Government of the United States have brought before that of Her Majesty, *one class of claims of a peculiar character, put forward by American citizens,* in regard to which you are authorized by my other despatch of this date to make a proposal to Mr. Seward; but *Her Majesty's Government have no corresponding class of claims to urge upon the attention of the American Government.*" And he, presently afterwards, speaks of "*the special American claims,* to which my other despatch alludes," an expression, which is adopted and repeated by Mr. Seward, in his reply to Sir F. Bruce (12th January, 1867).

In a further despatch to Mr. Adams (12th January, 1867), Mr. Seward justifies and re-affirms the sentence in his letter of the 27th August, in which the "Sumter" was mentioned, as "substantially correct;" on the ground that that vessel had been admitted into the British ports of Trinidad and Gibraltar, and "allowed to be sold" (in the latter port) "to British buyers, for the account and benefit of the insurgents;" and afterwards received, under the British flag, at Liverpool. His practical conclusion is, that "The United States think it not only easier, but more desirable, that Great Britain should acknowledge and satisfy *the claims for indemnity which we have submitted,* than it would be to find an equal and wise arbitrator who would consent to adjudicate them. If, however, Her Majesty's Government, for reasons satisfactory to them, should prefer the remedy of arbitration, the United States would not object. The United States, in that case, would expect to refer the whole controversy, just as it is found in the correspondence which has taken place between the two Governments, with such further evidence and arguments as either party may desire, without imposing restrictions, conditions, or limitations upon the umpire, and without waiving any principle or argument on either side. They cannot consent to waive any question, upon the consideration that it involves a point of national honour: and, on the other hand, they will not require that any question of national pride or honour shall be expressly ruled and determined as such."

To this Lord Stanley (9th March, 1867, to Sir F. Bruce), replied: "To such an extensive and unlimited reference, Her Majesty's Government cannot consent, for this reason, among others, that it would admit of, and indeed compel, the submission to the arbiter of the very question which I have already said they cannot agree to submit. *The real matter at issue between the two Governments,* when kept apart from collateral considerations, *is, whether, in the matters connected with the vessels out of whose depredations the claims of American citizens have arisen,* the course pursued by the British Government and by those who acted under its authority, was such as would involve *a moral responsibility* on the part of the British Government *to make good either in whole or in part, the losses of American citizens. This is a plain and simple question, easily to be considered by an arbiter, and admitting of solution without raising other and wider issues;* and on this question Her Majesty's Government are fully prepared to go to arbitration, with the further proviso, that if the decision of the arbiter is unfavourable to the British view, *the examination of the several claims of citizens of the United States shall be referred to a*

Mixed Commission, with a view to the settlement of the sums to be paid on them." His Lordship then repeats, that deeming it important "that the adjudication of this question should not leave *other questions of claims, in which their respective subjects or citizens may be interested*, to be matter of further disagreement between the two countries, Her Majesty's Government think it necessary, in the event of an understanding being come to between the two Governments as to the manner in which *the special American claims (which had formed the subject of the correspondence of which his present despatch was the sequel)* should be dealt with, that under a Convention to be separately and simultaneously concluded, the general claims *of the subjects and citizens of the two countries* arising out of the events of the late war should be submitted to a Mixed Commission," &c. "Such, then," he concluded, "is the proposal which Her Majesty's Government desire to submit to the Government of the United States: *limited reference to arbitration in regard to the so-called 'Alabama' claims,* and adjudication by means of a Mixed Commission of general claims."

The first occasion on which these words, "*the so-called 'Alabama' claims,*" occurred in the course of the whole correspondence, was shortly before the date of this letter; in a letter from Mr. Seward to Sir F. Bruce (12th January, 1867), in which he spoke of Lord Stanley's previous despatch of the 30th November, 1866, as setting forth "the views of Her Majesty's Government *of the so-called 'Alabama' claims presented in my despatch to Mr. Adams,*" and as concluding with a proposal of "the principle of arbitration, attended with some modification in regard to *those claims.*" Lord Stanley himself had spoken of "the settlement of *the 'Alabama' and other claims,*" by means of the proposals which he had authorized Sir F. Bruce to make, in a note to Sir F. Bruce, dated the 24th January, 1867. The same phrase, "Alabama claims," had also been used on one or two occasions, with reference to the same proposed settlement, in articles which previously appeared in some of the English newspapers during the autumn of 1866.

Lord Stanley's letter of the 9th March, 1867, was, by his direction, read to, and a copy left with Mr. Seward; and on the 2nd May, 1867, Mr. Adams communicated to Lord Stanley the substance of Mr. Seward's reply, saying that "the Government of the United States adhere to the view which they formerly expressed as to the best way of dealing with *these claims.* They cannot, consequently, consent to a special and peculiar limitation of arbitrament in regard to *the 'Alabama' claims*, such as Her Majesty's Government suggest. They cannot give any preference to *the 'Alabama' claims* over others, in regard to the form of arbitrament suggested; and, while they agree that all mutual claims which arose during the civil war *between citizens and subjects of the two countries* ought to be amicably and speedily adjusted, they must insist that they be adjusted by one and the same form of tribunal, with like and the same forms, and on principles common to all." (Lord Stanley to Sir F. Bruce, 2nd May, 1867.)

The language of this communication led Lord Stanley to think that his proposal might, perhaps, have been understood as applying only "to the claims arising out of the proceedings of the Alabama, to the exclusion of those arising out of the like proceedings of the Florida, Shenandoah, and Georgia." He, therefore, wrote to Sir F. Bruce, on the 24th May, 1867, saying, "It is important to clear up this point; and you will, therefore, state to Mr. Seward that *the offer to go to arbitration was not restricted to the claims arising out of the proceedings of the 'Alabama,' but applied equally to those arising out of the like proceedings of the other vessels that I have named;*" referring again to the terms of his despatch of the 9th March, he then directs Sir F. Bruce to inform Mr. Seward, that "*there was no intention on the part of Her Majesty's Government to give any preference,* in regard to the form of arbitrament, *to the 'Alabama' claims over claims in the like category,*" thinking that there must have been some misapprehension on this point, because "the question of disposing of general claims, in contradistinction to *the specific claims arising out of the proceedings of the 'Alabama,' and vessels of that class,* had not hitherto been matter of controversy between the two Governments." Shortly afterwards, having spoken of "*the first or 'Alabama' class of claims,*" he says, "*The one class, or the specific claims, such as those arising out of the proceedings of the 'Alabama' and such vessels,* depend for their settlement on the solution of what may be called an abstract question; namely, 'whether, in the matters connected with *the vessels, out of whose depredations the claims of American citizens have arisen,* the course pursued by the British Government, and those who acted under its authority, was such as would involve a moral responsibility on the part of the British Government *to make good, either in whole or in part, the losses of American citizens,*" and he repeats his former offer of separate modes of arbitration, as to the two classes of claims, viz., "*those of the 'Alabama' class,*" or "*the 'Alabama' and such like claims,*" and the general claims of *the citizens* of both countries.

Further discussion ensued. Mr. Seward, on the 12th of August, 1867 (in a despatch,

communicated by Mr. Adams), said that he understood the British offer "to be at once comprehensive and sufficiently precise to include *all the claims of American citizens for depredations on their commerce during the late rebellion, which had been the subject of complaint on the part of the Government of the United States*, but that the Government of the United States would deem itself at liberty to insist before the arbiter, that the actual proceedings and relations of the British Government, its officers, agents, and subjects, towards the United States, in regard to the rebellion and the rebels, as they occurred during that rebellion, were among the matters which were connected with *the vessels whose depredations were complained of*." He then objected to the constitution of two different tribunals, "one an arbiter to determine the question of the moral responsibility of the British Government *in regard to the vessels of the 'Alabama' class*, and the other a Mixed Commission to adjudicate the so-called general claims on both sides," and said, that "in every case" his Government "agreed only to unrestricted arbitration" (Lord Stanley to Sir F. Bruce, 10th September, 1867.)

Lord Stanley, in his reply of the 16th November (through Mr. Ford, 16th November, 1867), used further arguments in support of the British proposal, designating throughout the special class of claims as "*the so-called Alabama claims*."

After some intermission the correspondence was resumed by a despatch of Mr. Seward to Mr. Adams, expressing his wish "that some means might be found of arranging the differences now existing between England and the United States," which was communicated to Lord Stanley on the 15th February, 1868. The questions causing these differences were thus enumerated by Mr. Seward:—"1st. *The Alabama claims.* 2nd. The San Juan Question. 3rd. The Question of Naturalized Citizens, their rights and position. 4th. The Fishery Question;" and he suggested, that "the true method of dealing with all these matters was by treating them jointly, and endeavouring, by means of a Conference, to settle them all." (Lord Stanley to Mr. Thornton, 15th February, 1868.)

Negotiations followed, in the first instance directed to the third and second of these four questions. On the 20th October, Mr. Reverdy Johnson (who had now succeeded Mr. Adams) called on Lord Stanley "to discuss with me" (says Lord Stanley in a despatch of 21st October, 1868, to Mr. Thornton), "the question of *the Alabama claims*," proposing a Mixed Commission, to whom "*all the claims on both sides*" should be referred. Lord Stanley "pointed out the inapplicability of this method of proceeding, as applied to the *Alabama claims and other of the same class*," and suggested, as arbitrator, the head of a friendly State. As to the recognition of belligerency, he said that Her Majesty's Government could not depart from the position which they had taken up, "but that he saw no impossibility in so framing the reference, as that by mutual consent, either tacit or express, the difficulty might be avoided."

On the 10th November, 1868, a Convention was accordingly signed (subject to ratification) between Lord Stanley, on the part of Her Majesty, and Mr. Johnson, on the part of the United States. By Article I of this Convention it was agreed, that "all *claims of subjects of Her Britannic Majesty* upon the Government of the United States, *and all claims on the part of citizens of the United States upon the Government of Her Britannic Majesty*, which might have been presented to either Government for its interposition with the other since the 26th of July, 1853, ... and which yet remain unsettled, as well as any other such claims which might be presented within the time specified in Article III" (viz., within six months from the day of the first meeting of the Commissioners, unless they or the Arbitrator or Umpire should allow a further time), should be referred to four Commissioners, with provision for an arbitration or umpirage, in case of their being unable to come to a decision on any claim. Article IV was in these terms:—"The Commissioners shall have power to adjudicate upon *the class of claims referred to in the official correspondence between the two Governments as the 'Alabama' claims*, but before any of *such claims* is taken into consideration by them, the two High Contrating Parties shall fix upon some Sovereign or Head of a friendly State as an Arbitrator in respect of *such claims*, to whom *such class of claims* shall be referred, in case the Commissioners shall be unable to come to an unanimous decision upon the same."

Article VI provided, that "with regard to *the before-mentioned 'Alabama' class of claims*, neither Government shall make out a case in support of its position, nor shall any person be heard for or against any such claim. The official correspondence which has already taken place between the two Governments respecting the questions at issue, shall alone be laid before the Commissioners; and (in the event of their not coming to an unanimous decision as provided in Article IV), then before the Arbitrator, without argument written or verbal, and without the production of any further evidence. The Commissioners unanimously, or the Arbitrator shall, however, be at liberty to call for argument or further evidence, if they or he shall deem it necessary."

Down to this point, it is manifest that, in all the communications between the two countries, the claims known and referred to as "the 'Alabama' claims," were *claims for direct damage suffered by American citizens* through the acts of the "Alabama" and similar vessels, and such claims only.

When the terms of this Convention became known in America, the Government of the United States desired certain alterations to be made in it, none of which had any tendency either to enlarge the category of the claims in question, or to change the sense or application of the phrase "the 'Alabama' claims." The correspondence, as to the modifications desired, continued till January 1869, when (Her Majesty's Government having agreed to the alterations then proposed by Mr. Seward), the amended Convention of the 14th January, 1869, was signed by Lord Clarendon and Mr. Reverdy Johnson.

The correspondence of this period throughout maintains and confirms the sense, which the words "the 'Alabama' claims," or "the so-called 'Alabama' claims," had now acquired. In Lord Stanley's despatch of December 8, 1868, to Mr. Thornton, memoranda of several consultations and conferences with Mr. Reverdy Johnson, prior to the signature of the Convention of the 10th November, were inclosed. "*The 'Alabama' claims;*" *the 'Alabama' and other similar claims;*" "*the so-called 'Alabama' and other similar claims;*" and "*the so-called 'Alabama' claims, and others included under the same head;*" are the several varieties of phrase used in these memoranda to describe the subject, ultimately defined in the IVth Article of that Convention as "*the class of claims referred to in the official correspondence between the two Governments as the 'Alabama' claims.*" In a letter of the 12th November, 1868, Mr. Reverdy Johnson, while communicating a telegraphic despatch from Mr. Seward (in which a general approval of the terms of the Convention, afterwards modified in various important points, was accompanied by a stipulation that Washington, and not London, should be the place of meeting of the Commissioners, to which Her Majesty's Government assented), said, "I think the change will be disadvantageous to *the 'Alabama' claimants.*" In a despatch of 30th November, 1868, Mr. Thornton stated the objections, then urged by Mr. Seward to the Convention; in which Mr. Seward also spoke of the claims mentioned in Article IV as "*the 'Alabama' and war claims,*" and "*the 'Alabama' claims,*" and of the persons interested in those claims as "*the 'Alabama' claimants.*" Mr. Seward's despatch, of the 27th November, to Mr. Reverdy Johnson (communicated to Lord Clarendon on the 22nd December), repeatedly employs the same language. He says, "The United States are obliged to disallow this Article IV. The United States have no objection to the first clause of the Article, which declares that the Commissioners shall have power to adjudicate upon *the so-called 'Alabama' claims.* Indeed, the United States would willingly retain this clause, because of its explicitness with regard to *the 'Alabama' claims.* They did not, in their instructions to you, insist upon such a special direction in regard to *the 'Alabama' claims;* but only because they thought that special mention of *these claims* might be deemed inconvenient on the part of Her Majesty's Government; while it could not admit of doubt that *these so-called 'Alabama' claims were plainly included, as well as all other claims of citizens of the United States,* in the comprehensive description of claims contained in Article I. Secondly, it is to be considered by Her Majesty's Government, that *the 'Alabama' class of claims constitute the largest and most material of the entire mass of claims of citizens of the United States against Great Britain, which it is the object of the Convention to adjust.* Upon *the 'Alabama' claims* as well as all others, this Government is content to obtain, and most earnestly desires, a perfectly fair, equal, and impartial judicial trial and decision. This Government has always explicitly stated that it asks no discrimination in favour of *the 'Alabama' claims,* and can admit of no material discrimination against them in the forms of trial and judgment; but must, on the contrary, have them placed on the same basis as all other claims." . . . . . "It probably would conduce to no good end to set forth, on this occasion, the reasons why *the 'Alabama' claims, more than any other class of international claims existing between the two countries, are the very claims against which the United States cannot agree to, or admit of any prejudicial discrimination.* To present these reasons now, would be simply to re-state arguments which have been continually presented by this Department in all the former stages of this controversy; while it is fair to admit, that these reasons have been controverted with equal perseverance by Her Majesty's Department for Foreign Affairs."

The general result of this correspondence was that, in the Convention of the 14th January, 1869, other provisions were substituted for those of the IVth and VIth Articles of the Convention of 10th November, 1868, to which the United States' Government had objected; and the special mention of the "Alabama" claims was transferred from those Articles to Article I, which provided "that all claims on *the part of subjects of Her Britannic Majesty* upon the Government of the United States, and *all claims on the part of*

citizens of the United States upon the Government of Her Britannic Majesty, including the so-called 'Alabama' claims, which may have been presented to either Government for its interposition with the other since the 26th of July, 1853, . . . and which yet remain unsettled, as well as any other such claims which may be presented within the time specified in Article III of this Convention, whether or not arising out of the late civil war in the United States, shall be referred," &c.

On the 22nd February, 1869, Mr. Thornton reported to Lord Clarendon the Resolution of a majority of the Committee on Foreign Relations of the Senate of the United States, recommending the Senate not to ratify this Convention; Mr. Sumner, who moved the Resolution, having said, "that *it covered none of the principles* for which the United States had always contended." He also inclosed a Resolution of the Legislature of Massachusetts, "protesting against the ratification of any Convention which did not admit *the liability of England for the acts of the 'Alabama' and her consorts.*"

On the 22nd March, 1869, Mr. Reverdy Johnson (without any special instructions) called upon Lord Clarendon, and proposed a further change in the Ist Article of the Convention, which he thought "would satisfactorily meet the objections entertained by the Senate to the Convention, and would secure its ratification by that body." This new change consisted in the introduction of "*all claims on the part of Her Britannic Majesty's Government upon the Government of the United States, and all claims on the part of the Government of the United States upon the Government of Her Britannic Majesty,*" as well as all claims of subjects and citizens, as to which the language of the Convention would have remained unaltered. Lord Clarendon reports what then took place in his despatch to Mr. Thornton (22nd March, 1869). "I remarked to Mr. Johnson that his proposal would introduce an entirely new feature into the Convention, which was for the settlement of claims between the subjects and citizens of Great Britain and the United States; but that *the two Governments not having put forward any claims on each other,* I could only suppose that his object was to favour the introduction of some claim by the Government of the United States for injury sustained on account of the policy pursued by Her Majesty's Government. Mr. Reverdy Johnson did not object to this interpretation of his amendment, but said that *if claims to compensation on account of the recognition by the British Government of the belligerent rights of the Confederates were brought forward by the Government of the United States, the British Government might, on its part, bring forward claims to compensation for damages done to British subjects by American blockades, which, if the Confederates were not belligerents, were illegally enforced against them.*" Lord Clarendon then, after referring to the proofs which Her Majesty's Government had given of their willingness to make any reasonable amendments to meet the wishes of the United States, and to the difference in the course of proceeding adopted in America, said "that it did not seem proper for Her Majesty's Government to take any further step in the matter, or to adopt any amendment of the Convention, even if it had been free from objection."

Mr. Reverdy Johnson (still without authority) renewed his proposition, in a letter to Lord Clarendon, dated 25th March, 1869, in which he stated that he had reason to believe that the objection of the Senate of the United States to the Convention consisted "in the fact that the Convention provided only for the settlement by arbitration of *the individual claims of British subjects and American citizens upon the respective Governments, and not for any claims which either Government, as such, might have upon the other.*" "*My Government,*" he added, "*believe,* as I am now advised, that *it has a claim of its own upon Her Majesty's Government, because of the consequences resulting from a premature recognition of the Confederates during our late war, and* from the fitting out of the 'Alabama' and other similar vessels in Her Majesty's ports, *and* from their permitted entrance into other ports to be refitted and provisioned during their piratical cruise. *The existence of such a claim* makes it as necessary that its ascertainment and adjustment shall be provided for as the individual claims growing out of the same circumstances."

The United States' Government down to this time, had insisted that the new Convention ought strictly to follow the precedent of the Convention of 1853, which contained no provision for any species of public claims. Lord Clarendon, therefore, on the 8th of April, 1869, thus answered Mr. Reverdy Johnson:—"Her Majesty's Government could not fail to observe that this proposal involved a wide departure from the tenor and terms of the Convention of 1853, to which, in compliance with your instructions, you have constantly pressed Her Majesty's Government to adhere, as necessary to insure the ratification of a new Convention by the Senate of the United States. No undue importance is attached to this deviation; but I beg leave to inform you that, in the opinion of Her Majesty's Government, it would serve no useful purpose now to consider any amendment to a Convention which gave full effect to the wishes of the United States' Government, and was approved

by the late President and Secretary of State, who referred it for ratification to the Senat e where it appears to have encountered objections, the nature of which has not been officially made known to Her Majesty's Government."

Mr. Reverdy Johnson, on the 9th of April, replied that, "the design of the Convention of 1853 was to settle all claims which either Government, in behalf of its own citizens or subjects, might have upon the other. . . . . *At that time, neither Government, as such, made a demand upon the other. But that, as my proposition assumes, is not the case now. The Government of the United States believes that it has, in its own right, a claim upon the Government of Her Majesty.* In order therefore to a full settlement of all existing claims, it is necessary that *the one which my Government makes, and any corresponding claim which Her Majesty's Government may have upon the United States,* should be included within the Convention of the 14th January, 1869. *My instructions, to which your Lordship refers, were to provide for the settlement of the claims mentioned in such instructions,* by a Convention upon the model of the one for February, 1853. *That I did not suggest in the negotiations which led to the Convention of January the including within it any Governmental claims, was because my instructions only referred to the individual claims of citizens and subjects.* I forbear to speculate as to the grounds upon which my instructions were *so limited.*"

Her Majesty's Government adhered to their decision not to entertain at all the suggestion thus made by Mr. Reverdy Johnson; and they intimated (in correction of an erroneous inference drawn by him from the concluding sentence of Lord Clarendon's letter of the 8th April), that it was not to be supposed that this proposal would be acceptable to Her Majesty's Government, even if it were made or repeated under positive instructions from the United States' Government, and with the prospect of terminating the entire controversy.—(Lord Clarendon to Mr. Johnson, 15*th April*, 1869; and Mr. Johnson's reply, 16*th April*, 1869.)

From this incident in the history of the negotiations, the following conclusions of fact result:—

1. That Mr. Reverdy Johnson's instructions from his Government never extended to the assertion, or settlement, of any other claims, than those of individual citizens of the United States against Great Britain.

2. That in suggesting (for the first time), the possible existence of public claims on behalf of his Government, he acted without authority.

3. That no such public claims as those of which the existence was suggested by him, had ever been presented or notified; nor were, even then, in any manner defined.

4. That the public claims, of which the possible existence was so suggested, were not claims "growing" or arising (simply) "out of the acts of" the "Alabama," or any other vessels; but claims, "because of the consequences resulting from a premature recognition of the Confederates during the war, AND from the fitting out of the 'Alabama,' and other similar vessels in Her Majesty's ports, AND from their permitted entrance into other ports."

5. That the words "*Alabama claims*" (or any equivalent form of expression), were never made use of, nor was their use ever proposed to be varied or extended, so as to comprehend this new class of (suggested) public claims.

6. That the idea of a *one-sided* reference of such supposed public claims of the Government of the United States only, was never for a moment advanced or entertained; on the contrary, the essential condition of Mr. Johnson's proposal was, that it should also be open to Her Majesty to advance any public claims whatever, which they might conceive themselves to have against the Government of the United States,—a claim for injury to British interests, by the assertion and exercise of belligerent rights against British commerce, being expressly anticipated, as a probable or possible set-off to any claim on the part of the United States, founded upon the denial of a belligerent status, at any given period, to the Confederates.

7. That, although offered under these conditions, the proposal was simply, and without any discussion, declined by Her Majesty's Government.

It was in Mr. Sumner's speech, at the meeting of the United States' Senate, which refused to ratify the Convention of the 14th January, 1869, that the first conception of public claims, of the nature and magnitude of those now advanced in the "case" of the United States, was made known to the world. His argument on this head was thus summed up by Mr. Thornton (19th April, 1869, to Lord Clarendon): "Your Lordship will perceive, that the sum of Mr. Sumner's assertions is, that England insulted the United States by the premature, unfriendly, and unnecessary Proclamation of the Queen, enjoining neutrality on Her Majesty's subjects; that she owes them an apology for this step: that *she is responsible for the property destroyed by the 'Alabama' and other Confede-*

rate cruizers, and even for the remote damage to American shipping interests, including the increase of the rate of insurance; that the Confederates were so much assisted by being able to get arms and ammunition from England, and so much encouraged by the Queen's Proclamation, that the war lasted much longer than it would otherwise have done, and that we ought therefore to pay imaginary additional expenses imposed upon the United States by the prolongation of the war." Mr. Sumner himself did not affect to represent the latter portion, at all events, of his suggested demand, as "growing out of the acts of" the "Alabama," or of any other particular vessels: and Mr. Thornton's comment upon the whole of it shows very clearly the impossibility of ascribing to the acts of any particular vessels, alleged to have been fitted out from British ports, either the whole, or any ascertainable part of the general losses sustained by American commerce during the war, or even distinguishing between such losses of that kind as were real, and those which were apparent only.

So far, no step was taken by the United States' Government to adopt Mr. Sumner's views, or to advance claims corresponding to them. On the 10th of June, 1869, Mr. Motley renewed to Lord Clarendon the declaration of the wish of his Government, "that existing differences between the two countries should be honourably settled, and that the international relations should be placed on a firm and satisfactory basis;" which Lord Clarendon, of course, reciprocated. Then, after adverting to other subjects, he said that "the Claims Convention had been published prematurely, owing to some accident which he could not explain; and that consequently, long before it came under the notice of the Senate, it had been unfavourably received by all classes and parties in the United States. The time at which it was signed was thought most inopportune, as the late President and his Government were virtually out of office, and their successors could not be committed on this grave question. The Convention was further objected to, *because it embraced only the claims of individuals, and had no reference to those of the two Governments on each other;*" and, "lastly, that it settled no question, and laid down no principle. These were the chief reasons which had led to its rejection by the Senate:" and Mr. Motley added "that although they had not been at once and explicitly stated, no discourtesy to Her Majesty's Government was thereby intended."

On the 25th September, 1869, Mr. Fish revived the whole subject of the controversies between the two Governments within its widest range in a long and elaborate despatch to Mr. Motley, in which he referred (among other things) to the responsibility of the British Government for (at least) "*all the depredations committed by the 'Alabama'*" as indisputable. He stated, towards the end, the President's concurrence with the Senate in disapproving the Convention of the 14th January, 1869, thinking (in addition to general reasons left to be inferred from the general arguments of the despatch), that "the provisions of the Convention were inadequate to provide reparation for the United States in the manner and to the degree to which he considers the United States entitled to redress." He added: "The President is not yet prepared to pronounce on the question of the indemnities which he thinks due by Great Britain to individual citizens of the United States for the destruction of their property by rebel cruizers fitted out in the ports of Great Britain. *Nor is he now prepared to speak of the reparation which he thinks due by the British Government for the larger account of the vast national injuries it has inflicted on the United States. Nor does he attempt now to measure the relative effect of the various causes of injury; as, whether by untimely recognition of belligerency; by suffering the fitting-out of rebel cruizers; or by the supply of ships, arms, and munitions of war to the Confederates; or otherwise, in whatsoever manner.* . . . All these are subjects of future consideration, which, when the time for action shall come, the President will consider, with sincere and earnest desire that all differences between the two nations may be adjusted amicably and compatibly with the honour of each, and to the future promotion of concord between them; to which end he will spare no efforts within the range of his supreme duty to the rights and interests of the United States. . . . At the present stage of the controversy, the sole object of the President is to state the position and maintain the attitude of the United States in the various relations and aspects of this grave controversy with Great Britain. It is the object of this paper (which you are at liberty to read to Lord Clarendon) to state calmly and dispassionately, with a more unmeasured freedom than might be used in one addressed directly to the Queen's Government, what this Government seriously considers the injuries it has suffered. *It is not written in the nature of a claim, for the United States now make no demand against Her Majesty's Government on account of the injuries they feel that they have sustained.*"

Lord Clarendon, understanding this despatch as intended to revive, and to prepare the way for a new settlement of, the claims previously advanced, spoke of it, in his answering despatch to Mr. Thornton (November 6, 1869), as "a despatch from Mr. Fish

on the 'Alabama' claims." That it was not intended to extend, and that it had not the effect of extending, the signification of that term, as used in the previous correspondence, is plain, (1) from the fact that Mr. Fish expressly disclaimed for his despatch the office or effect of *making* any new *claim* or *demand*; (2) that it reserved for future consideration the question of reparation for the (supposed) "national injuries" inflicted by the British Government on the United States; and (3) that it declined "to measure the relative effect of the various (alleged) causes of injury;" the "suffering the fitting out of rebel cruizers," being only one of three causes enumerated. Lord Clarendon simply contented himself with replying, that "Her Majesty's Government could not make any new proposition, or run the risk of another unsuccessful negotiation until they had information more clear than that which was contained in Mr. Fish's despatch, respecting the basis upon which the Government of the United States would be disposed to negotiate." But, in a paper of observations upon the arguments in this despatch, which he at the same time (6th November, 1869), transmitted to Mr. Thornton, to be communicated to Mr. Fish, he remarked, under the head of "*Indirect injury to American commerce,*" "*This allegation of national, indirect, or constructive claims was first brought forward officially by Mr. Reverdy Johnson, in his attempt to renew negotiations on the Claims Convention in March last.* Mr. Thornton has shown the difficulty there would be in computing the amount of the claim, even if it were acknowledged, in a despatch in which he mentions the continual decrease of American tonnage. This is partly, no doubt, to be ascribed to the disturbance of commercial relations consequent on a long war, partly to the fact that many vessels were nominally transferred to British owners during the war to escape capture. . . . . Is not, however, a good deal of it to be attributed to the high American tariff, which makes the construction of vessels in American ports more expensive than ship-building in England, and has thereby thrown so large a proportion of the carrying trade into English hands? There must be some such cause for it, or otherwise American shipping would have recovered its position since the war, instead of continuing to fall off." . . . . . And with regard to "*the claims for vast national injuries,*" he noticed that Professor Wolsey, the eminent American jurist, had repudiated them as untenable, &c."

This closes the narrative of the communications between the two Governments, anterior to those which had for their immediate result the negotiation of the Treaty of Washington. They show conclusively: (1) that, down to the 26th of January, 1871 (when Her Majesty's Government, through Sir E. Thornton, proposed to Mr. Fish the appointment of a Joint High Commission to settle the Fishery Question, and all other questions affecting "the relations of the United States towards Her Majesty's possessions in North America"), no *actual claim* had been formulated or notified on the part of the United States against Her Majesty's Government, except for the capture or destruction of property of individual citizens of the United States by the "Alabama" and other similar vessels; (2) that the Government of the United States had, in Mr. Fish's despatch of the 25th September, 1869, for the first time intimated to the Government of this country, that they considered there might be grounds for some claims of a larger and more public nature, though they purposely abstained at that time from making them; (3) that the grounds indicated, as those on which any such larger and more public claims might be made, were not limited to the acts of the "Alabama" and other similar vessels, or to any mere consequences of those acts; and (4) that the expression "*the 'Alabama' claims,*" had always been used, in the correspondence between the two Governments, to describe the claims of American citizens on account of their own direct losses by the depredations of the "Alabama," "and other similar vessels;" and had never been employed to describe, or as comprehending, any public or national claims whatever of the Government of the United States.

It was under these circumstances, that Mr. Fish, on the 30th of January, 1871, informed Sir E. Thornton that the President thought, "that the removal of the differences which arose during the rebellion in the United States, and which had existed since then, *growing out of the acts committed by the several vessels which had given rise to the claims generically known as the 'Alabama' claims,* would also be essential to the restoration of cordial and amicable relations between the two Governments." Sir E. Thornton replied (1st February, 1871), that he was authorized by Earl Granville to state, that "it would give Her Majesty's Government great satisfaction if *the claims commonly known by the name of the 'Alabama' claims* were submitted to the consideration of the same High Commission, by which Her Majesty's Government had proposed that the questions relating to British possessions in North America should be discussed, provided *that all other claims, both of British subjects and citizens of the United States,* arising out of acts committed during the recent civil war in this country, were *similarly* referred to the same Commission." Mr. Fish, in answer to this announcement, on the 3rd February, 1871,

after citing the exact terms of Sir E. Thornton's letter, expressed the satisfaction with which the President "had received the intelligence, that Earl Granville had authorized him to state that Her Majesty's Government had accepted the views of the United States' Government as to the disposition to be made of *the so-called 'Alabama' claims;*" and that "if there be other and further claims *of British subjects or of American citizens* growing out of acts committed during the recent civil war in this country, he assents to the propriety of their reference to the same High Commission."

Mr. Fish, therefore, and Sir E. Thornton agreed in describing, by the several forms of expression, *the claims generically known as the 'Alabama' claims;*" "*the claims commonly known by the name of the 'Alabama' claims;*" "*the 'Alabama' claims;*" and "*the so-called 'Alabama' claims;*" one and the same subject matter. What this was is proved, not only by the previous use of the same or similar terms, but also by the fact that, if these words had been now intended to include indefinite public or national claims of the United States' Government against Great Britain, and not merely those claims for direct losses, which had been previously presented or notified, and any others *ejusdem generis*, it must of necessity have followed, (according to the suggestions which had been made by Mr. Reverdy Johnson, and afterwards by Mr. Motley), that any counter claims, which the Government of Great Britain might have thought fit to advance, on public or national grounds, against the Government of the United States, must have been in like manner provided for. But the only other claims provided for were those of subjects of Great Britain, and citizens of the United States.

In strict conformity with this view, Lord Granville, when enumerating in his instructions to Her Majesty's High Commissioners (9th February, 1871) the principal subjects to which their attention would be directed, described these claims as "the claims on account of the 'Alabama,' 'Shenandoah,' and certain other cruizers of the so-styled Confederate States;" saying, "Under this head are comprised the claims against Great Britain for damages sustained by the depredations of the 'Alabama,' 'Shenandoah,' and 'Georgia,' the vessels which were furnished on account of the Confederate States and armed outside of British jurisdiction, and the 'Florida,' which, though built in England, was armed and equipped in the port of Mobile."

The same, or the equivalent words, therefore, as often as they are used in the Protocols of the Commissioners and in the Treaty of Washington itself, ought, upon ordinary principles of construction, to be understood as bearing the same sense. And this seems to be made more clear by the exclusion from the reference of any claims of this country or of the people of Canada, on account of the proceeding of the Fenians in the United States. There might certainly have been national claims of Great Britain arising out of those proceedings (in addition to any particular losses by Canadian subjects), which could not possibly have been excluded on any just or intelligible principle, if indefinite claims for public or national losses had been intended to be left open to the Government of the United States.

On a careful examination of the language of the Protocols and the Treaty, nothing is found at variance with this conclusion, while very much is found to confirm it.

The 36th Protocol, drawn up after the Commissioners had agreed upon all the terms of the Treaty, for the purpose of recording (so far as they thought it necessary or desirable) the history of their proceedings, begins by stating the proceedings at their first conference, on the 8th March, 1871. On that occasion the American Commissioners spoke (1) of the feeling of the United States, "that they had sustained a great wrong, and that great injuries and losses were inflicted upon their commerce and their material interests *by the course and conduct of Great Britain during the recent rebellion in the United States;*" (2) of "*the history of the 'Alabama' and other cruizers* which had been fitted out, or armed, or equipped, or which had received augmentation of force, in Great Britain or in her Colonies, *and of the operations of those vessels, as showing* (A) *extensive direct losses in the capture and destruction of a large number of vessels with their cargoes; and in the heavy national expenditure in the pursuit of the cruizers; and* (B) *indirect injury in the transfer of a large part of the American commercial marine to the British flag, in the enhanced payments of insurance, in the prolongation of the war, and in the addition of a large sum to the cost of the war and the suppression of the rebellion;* and as also *showing* (C) that Great Britain, by reason of failure in the proper observance of her duties as a neutral, *had become justly liable for the acts of those cruizers and their tenders.*" So far all is preamble, and as yet there is no mention of *claims*. General injury to the commerce and material interests of the United States, "*by the course and conduct of Great Britain;*" *direct losses* by the *captures* of the "Alabama" and similar cruizers, and also (an item now first added) *by the national expenditure in their pursuit;* and indirect public injury, "shown by the history of those vessels and their operations," are all spoken of; but the "*liability*," expressly inferred from the

same "history" against Great Britain, is limited to "*the acts of those vessels and their tenders.*"

The American Commissioners then proceed to speak of "*the claims* for the loss and destruction of private property *which had thus far been presented,*" as amounting to about 14,000,000 dollars, without interest, "which amount was liable to be greatly increased by claims which had not yet been presented;" and, with respect to the new head of direct losses, now for the first time mentioned, they say that "the cost to which the Government had been put in pursuit of cruizers, could easily be ascertained by certificates of Government accounting officers." Here the word "*claims*" is used with respect to direct losses only, as it had always been used before, but with notice that direct losses of the Government, in pursuit of the vessels referred to, are now meant to be included in that category, as well as the losses of private citizens. And then follow the words: "That, in the hope of an amicable settlement, no estimate was made of the indirect losses, without prejudice, however, to the right of indemnification on their account, in the event of no such settlement being made."

Here is a clear waiver of the (assumed) "right of indemnification" for indirect losses in the event of "an amicable settlement" being made. The meaning of the words "an amicable settlement" has been already considered in the First Part of this Memorandum. At present the question is as to the meaning of the words "the claims generically known as the 'Alabama' claims." If no actual claim for these indirect losses had been previously made, it clearly was not made now by treating it as a reserved "right" which would or might be insisted on in the event of no amicable settlement being arrived at. Still less could it, by means of any such reservation, be brought within the category of "claims" already "generically known as the 'Alabama' claims."

The next step in the proceedings corroborates this view. For, after stating their desire for an expression of regret on the part of Her Majesty's Government, which they obtained, the American Commissioners then proposed "that the Joint High Commissioners should agree upon a sum which should be paid by Great Britain to the United States, *in satisfaction of all the claims*, and the interest thereon." *All the claims* are here spoken of; but it can hardly be possible that, in this proposal, they meant to include indirect losses: because "the right to indemnification" on that account was only to be asserted in the event of no amicable settlement being made: nor were these indefinite claims such as, by any possibility, could be regarded as bearing interest.

In the later passages of this Protocol, which relate to the proceedings resulting in the reference to Arbitration, and in the agreement as to the three "Rules," no trace occurs of any recurrence to the reserved "right of indemnification," or to the subject of indirect losses. "*The 'Alabama' claims*" alone are spoken of.

In the Ist Article of the Treaty itself, the words "*generically* known," &c., so far as they differ from other forms of expression previously used in respect of the same subject, differ only by defining that subject with greater accuracy, so as more pointedly to exclude indirect losses.

"Generically" is an adverb of classification, with reference to the nature of the subject matter itself. Claims for direct losses, by the acts of a particular class of vessels, or by a definite expenditure for the prevention of these acts, are, in their nature, of the same category or genus; and it is the very fact of their being capable of being directly connected with the acts of those vessels, as an effect with its cause, which makes them so. Indirect public losses, to which many concurrent causes may have contributed (as, with respect to those now in question, is clearly demonstrated by Mr. Sumner's speech, and Mr. Thornton's observations upon it, and also by Lord Clarendon's memorandum of the 6th November, 1869), are different in their kind, and open up much wider, and wholly different, fields of inquiry.

The VIIth and Xth Articles of the Treaty appear also to be irreconcileable with any other view of the "Claims" referred. The Arbitrators are to "first determine *as to each vessel separately*, whether Great Britain has, *by any act or omission*, failed to fulfil any of the duties," &c.; and "shall *certify the fact, as to each of the said vessels.*" This inquiry is addressed, and is limited, to certain imputed "acts or omissions" of this country, not as to any other matters, but as to *each, separately*, of certain vessels. The Arbitrators, if they should find "that Great Britain has failed to fulfil any duty or duties *as aforesaid*," have power to "*award a sum in gross to be paid* by Great Britain to the United States *for all the claims referred.*" But the power of awarding a sum in gross cannot enlarge or alter the category of the claims referred, or the scope of the inquiry; the foundation of such an award must be some particular failure of duty, considered by the Arbitrators to have been established against Great Britain, by some acts or omissions as to some particular vessels or vessel; and the sum awarded can only be in respect of damages resulting from such

failure of duty, as to such particular vessels or vessel. If the Arbitrators should "find that Great Britain has failed to fulfil any duty or duties *as aforesaid*," but do not award a sum in gross, a Board of Assessors is then "to ascertain and determine *what claims are valid* and what amount or amounts shall be paid by Great Britain to the United States, *on account of the liability arising from such failure as to each vessel*, according to the extent of such liability as decided by the Arbitrators." It seems impossible that power can have been given to the Arbitrators to award a sum in gross for claims not severable as to each vessel, and which, therefore, the Assessors, when dealing with the case of each vessel in detail, could not entertain or allow.

II. The second question, viz., what vessels are described by the words "*the several vessels* which have given rise to the claims generically known as the 'Alabama claims,'" admits of being more concisely treated.

Until Mr. Seward's despatch to Lord Stanley of the 27th August, 1866, the "Alabama," "Florida," "Georgia," and "Shenandoah" were the only particular vessels in respect of whose acts any claims had been made. With respect to more general complaints of the same character, Mr. Adams in his letter to Lord Russell of the 7th April, 1863, referred only to vessels "*supplied from the ports of the United Kingdom*," adding, "So far as I am aware, not a single vessel has been engaged in these depredations excepting such as have been so furnished. Unless, indeed, I might except one or two passenger steamers belonging to persons in New York, forcibly taken possession of whilst at Charleston in the beginning of the war, feebly armed, and very quickly rendered useless for any aggressive purpose." In his letter of the 20th May, 1865, when recapitulating his former complaints, he mentioned under this head, only "*the issue from British ports* of a number of British vessels," by which a large amount of American property had been destroyed; "*the action of these British-built, manned, and armed vessels*; the ravages committed by armed steamers, *fitted out from the ports of Great Britain*;" and "*the issue of all the depredating vessels from British ports with British seamen, and with, in all respects but the presence of a few men acting as officers, a purely British character.*"

Mr. Seward in his despatch of the 27th August, 1866 (as has been already seen), spoke of "depredations upon our commercial marine, committed by the "Sumter," the 'Alabama,' the 'Florida,' the 'Shenandoah,' *and other ships of war, which were built, manned, armed, equipped, and fitted out in British ports, and despatched therefrom by or through the agency of British subjects*, and which were harboured, sheltered, provided, and furnished as occasion required, during their devastating career, in ports of the realm, or in ports of British Colonies in nearly all parts of the globe."

As the "Sumter" was (notoriously) not built, manned, armed, equipped, or fitted-out in any British port, or despatched therefrom by or through the agency of any British subjects, Lord Stanley thought that this was a casual and unintentional error, and pointed it out to Mr. Seward (through Sir F. Bruce) as such; especially as the "Georgia," in respect of which vessel particular claims were scheduled to Mr. Seward's despatch, was not named therein; while no such claims were scheduled in respect of the "Sumter" or of any other ships, except the "Alabama," "Shenandoah," Georgia," and "Florida." Mr. Seward, as has been already seen, justified himself (12th January, 1867) as "substantially correct," on the ground that the "Sumter" had received certain hospitalities in the British ports of Trinidad and Gibraltar, and had been sold to British subjects at Gibraltar and afterwards received at Liverpool.

As this was the first occasion, so it was also the last, on which mention was made of any ship or ships, not alleged to have been fitted-out, armed, equipped, or manned in any British port, but which had merely been allowed to receive limited supplies of coal or other necessaries in British waters, as coming within the category of vessels whose acts could be made the foundation of claims against Great Britain. The words "the several vessels which have given rise to the claims generically known as the Alabama Claims" cannot possibly be extended to vessels of this character, unless it be on the ground of this one mention of the "Sumter" in the context which has been cited in these two letters of Mr. Seward. In the "Case," however, presented on the part of the American Government under the Treaty, damages are claimed in respect of five vessels ("Sumter," "Nashville," "Retribution," "Tallahassee," "Chickamauga"), which were in every sense American; and which are not alleged to have been built, fitted-out, armed, equipped, or manned in any part of the British dominions; and in the 7th Volume of the Appendix to that "Case," further claims of the like character appear to be made in respect of the acts of two other similar vessels ("Boston" and "Sallie").

It may be here observed that, by the general list of claims filed in the State Department of the United States, besides these vessels, not less than eight other American ships ("Calhoun," "Echo," "Jeff. Davis," "Lapwing," "Savannah," "St. Nicholas,"

"Winslow," "York"), in respect of whose acts no claim is now made against Her Majesty's Government, appear to have been also engaged in belligerent naval operations on the part of the Confederate States, which resulted in the destruction of ships and other property belonging to citizens of the United States.

When Lord Stanley (24th May, 1867), spoke of "the proceedings of the 'Alabama' *and vessels of that class,*" and (10 September, 1867) of "claims arising out of the depredations of the 'Alabama,'" and "*of vessels of the like character*;" when Mr. Reverdy Johnson (25th March, 1869), spoke of the possible public claim of the United States' Government, as resulting (*inter alia*), "from the *fitting out of the 'Alabama' and other similar vessels in Her Majesty's ports,* and from *their* permitted entrance into other ports;" when Mr. Fish (25th September, 1869) spoke of the destruction of American citizens "*by rebel cruizers fitted out in the ports of Great Britain,*" and injury "*by suffering the fitting out of rebel cruizers, or by the supply of ships,* arms, and munitions of war to the Confederates;" when Mr. Motley (23rd October, 1869), spoke of "the destruction of American commerce *by cruizers of British origin* carrying the insurgent flag;" it is clear that they did not include, or mean to include, as if belonging to one and the same category of vessels, ships alleged to be of British origin, and ships of American origin, with the fitting out or equipment of which British subjects had been in no way concerned.

In Lord Granville's instructions to Her Majesty's High Commissioners, it is also plain that the former class of vessels alone is contemplated. In the narrative of the proceedings of the 8th March, 1871, contained in the 36th Protocol, it seems equally clear, that the United States' Commissioners had also the same class of vessels in view: for they spoke of "*the history of the 'Alabama' and other cruizers which had been fitted out, or armed, or equipped, or which had received augmentation of force in Great Britain or in her colonies;*" and they expressed a hope "that the British Commissioners would be able to place upon record an expression of regret by Her Majesty's Government for the depredations committed *by the vessels whose acts were now under discussion.*" Her Majesty's Commissioners (on a later day) "replied that they were authorized to express, in a friendly spirit, the regret felt by Her Majesty's Government *for the escape, under whatever circumstances, of the 'Alabama' and other vessels from British ports,* and for the depredations committed *by them;* which expression of regret was accepted by the American Commissioners "as very satisfactory."

In the first Article of the Treaty itself, the expression of Her Majesty's regret, in these identical words, immediately precedes the agreement of reference by which the claims referred are described as "*growing out of acts* committed *by the aforesaid vessels.*"

The necessary conclusion appears to be, that the vessels intended to be referred to in the Treaty were only such as could, in good faith, be alleged to have been fitted out, or armed, or equipped, or to have received an augmentation of force, in some part of the British dominions:—the three Rules in the VIth Article of the Treaty being, of course, material to be regarded, in determining all questions of fact in any case alleged to be of this nature. The "Sumter," "Nashville," and other ships above mentioned, have never been alleged to come within any of the terms of this description, unless, indeed, it is now meant to be said that the permission to any Confederate vessel to obtain, in a British port, such limited supplies of coal as were permitted to both the belligerent parties by Her Majesty's regulations, ought to be deemed an improper "augmentation of the force" of such vessel, within the meaning of the second Rule.

III. The solution of the third question, viz., what claims are described by the words, "*all the said claims, growing out of acts committed by the aforesaid vessels, and generically known as the Alabama claims*" (being the words in which the subject matter of the reference to arbitration agreed upon is defined), has been anticipated by the conclusions already arrived at. It may be added, however, that the words "growing out of *acts committed by* the aforesaid vessels" cannot, without forcing them altogether beyond their fair and natural sense, be applied to claims for indirect losses, not resulting from any particular *acts committed* by any particular ship or ships; but alleged to result (so far as they may be referable at all to naval or maritime causes) from the very existence on the high seas of a naval force belonging to the Confederate States, and recognized by Great Britain and other neutral Powers as having a belligerent character and belligerent rights. If the Confederate States had, in fact, procured all their cruizers from British sources, this criticism would still hold good; much more when several (in fact, a considerable majority in number) of the cruizers actually employed by them, and by which losses were inflicted on United States' citizens, were otherwise procured.

PART III.—*On the Amount of the Claims for Indirect Losses.*

"The claims as stated by the American Commissioners may be classified as follows:—

"1. The claims for direct losses growing out of the destruction of vessels and their cargoes by the insurgent cruizers.

"2. The national expenditures in the pursuit of those cruizers.

"3. The loss in the transfer of the American commercial marine to the British flag.

"4. The enhanced payments of insurance.

"5. The prolongation of the war and the addition of a large sum to the cost of the war and the suppression of the rebellion.

"So far as these various losses and expenditures grew out of the acts committed by the several cruizers, the United States are entitled to ask compensation and remuneration therefor before this Tribunal."—(United States' Case, p. 469.)

Mr. Fish observes that "an extravagant measure of damages" has been supposed, not only by the British press, but also, "most unaccountably," by some of the statesmen of this country, to be sought through the claim for compensation on account of indirect losses. It will therefore be well to present, from United States' authority, some part of the evidence which, in the absence of explanation or retractation, has led to this conception. Undoubtedly the Case (p. 476) disclaims an accurate estimate; but it supplies materials which cannot fail to suggest the appropriate conclusion. They are as follows:—

From the 4th of July, 1863, Great Britain is declared to have been "the real author of the woes" of the American people (p. 479). From this time "the war was prolonged for the purpose" of maintaining offensive operations "through the cruisers" (*ibid.*) And the Arbitrators are accordingly called upon "to determine whether Great Britain ought not, in equity, to reimburse to the United States the expenses thereby entailed upon them" (*ibid.*). On all these points, the Case proceeds to state, the evidence "will enable the Tribunal to ascertain and determine the amount." To this amount interest is to be added up to the day when the compensation is payable, within twelve months after the award (p. 480). The rate of interest in New York is 7 per cent. (*ibid.*); and "the United States make a claim for interest at that rate" from 1st July, 1863, "as the most equitable day." The interest therefore is to be charged at 7 per cent. for a period of from ten to eleven years.

It may be presumed to be incapable of dispute, that more than half the expenses of the war were incurred after the 1st July, 1863. What was the sum total of those expenses? Upon this point there is, in a form generally if not precisely appropriate, official evidence from America. In the Report of the Special Commissioner of the Revenue for 1869, p. vi, they are stated at 9,095,000,000 dollars, including 1,200,000,000 dollars for the suspension of industry. Of this amount 2,700,000,000 are set down to the Confederates.

Thus it appears that the Case does not go beyond the truth (so far as this head of damage is concerned) in stating that the Arbitrators would find the materials sufficiently supplied for estimating the amount which "in equity" Great Britain ought to pay. It may indeed be said that the amount, suggested by the passages and facts to which reference is made, forms an incredible demand. But, in perusing and examining this Case, the business of Her Majesty's Government has been to deal, not with any abstract rule of credibility, but with actual, regular, and formal pleas, stated and lodged against Great Britain on behalf of one of the greatest nations of the earth. Is it then "most unaccountable," in view of the evidence as it stands, that the press and that statesmen of this country should have formed the idea that "an extravagant measure of damages" was sought by the Government of the United States?

It appears from the despatch of Mr. Fish that no such idea has ever been entertained by that Government. Having this authentic assurance so supplied, it may be deemed little material to inquire whether on this important matter the language of the Case has been misunderstood by Her Majesty's Government, or whether it is now disavowed. If, however, it has been misconstrued, the misconstruction undoubtedly has not been confined to England, but has been largely shared by writers on the Continent of Europe.

Were this Government indeed prepared to acquiesce in the submission of these claims, it would still remain to ask in what way the Government of the United States proposed to guard against the acceptance by the Arbitrators of those enormous estimates which, taken without authoritative comment, the language of the Case suggests. But it is scarcely necessary to observe that the question of more or less in this matter is entirely distinct from the question of principle on which the statements and arguments of Her Majesty's Government are founded.

No. 5.

Mr. Fish to General Schenck.—(Communicated to Earl Granville by General Schenck, May 1.)

Sir, *Department of State, Washington, April* 16, 1872.

I HAVE given very careful attention to the note of the 20th of March, addressed to you by Earl Granville, professing to state the reasons which induced Her Majesty's Government to make the declaration contained in his previous note to you of 3rd of February—that in the opinion of Her Majesty's Government it is not within the province of the Tribunal of Arbitration at Geneva to decide upon the claims for indirect losses and injuries put forward in the Case of the United States

His Lordship declares this statement to be made upon the invitation which this Government appears to have given. I should regret that what was intended only as a courteous avoidance of the naked presentation of a directly opposite opinion to that which had been expressed on behalf of the British Government, unsustained by any reasons, should have subjected his Lordship to the necessity of an elaborate reply. It was not the desire of this Government to invite any controversial discussion, nor have they now any wish to enter upon or continue such discussion.

Some remarks, however, appear in the note of his Lordship which seem to require a reply.

It opens with a seeming denial of the accuracy of my assertion that claims for indirect losses and injuries are not put forward for the first time in the "Case" presented by this Government to the Tribunal at Geneva; that for years they have been prominently and historically part of the "Alabama claims;" and that incidental or consequential damages were often mentioned as included in the accountability. It cannot be supposed that his Lordship intends more than to say that the claims for indirect or national losses and injuries were not "formulated" by this Government, and the amount thereof set forth in detail and as a specific demand; for he admits that, on the 20th November, 1862, within a few weeks after the "Alabama" had set out on her career of pillage and destruction, Mr. Adams suggested the liability of Great Britain for losses other than those of individual sufferers. In his note of that date to Lord Russell, Mr. Adams stated that he was instructed by his Government to "solicit redress for the *national* and private injuries already thus sustained."

On the 19th February, 1863, Mr. Seward instructed Mr. Adams that "this Government does not think itself bound in justice to relinquish *its* claims for redress for the injuries which have *resulted from the fitting-out and dispatch of the 'Alabama' in a British port.*"

As the consequences of this fitting out began to develop themselves and their effects in encouraging the rebellion, became manifest, Mr. Adams, in an interview with Lord Russell, indicated them (as described by the latter in a letter to Lord Lyons under date of 27th March, 1863), as "a manifest conspiracy in this country (Great Britain) to produce a state of exasperation in America, and thus bring on a war with Great Britain, *with a view to aid the Confederate cause.*"

In a note dated April 7, 1865, addressed to Lord Russell, Mr. Adams, after complaining of the hostile policy, pursuant to which the cruizers were fitted out, says, "That policy, I trust, I need not point out to your Lordship, *is substantially the destruction of the whole mercantile navigation belonging to the people of the United States.*" "It may thus be fairly assumed as true that *Great Britain, as national Power, is, in point of fact, fast acquiring the entire maritime commerce of the United States.*"

That Lord Russell regarded this as the foundation of a claim for damages for the transfer of the commercial marine of the United States to the flag of Great Britain is apparent in his reply to Mr. Adams, under date of May 4, 1865, when he says, "I can never admit that the duties of Great Britain toward the United States are to be measured by the losses which the trade and commerce of the United States may have sustained."

Again on 20th May, 1865, Mr. Adams, writing to Lord Russell, distinctly names *indirect* or consequential losses. His language is "that in addition to this *direct* injury the action of these British-built, manned and armed vessels has had the indirect effect of driving from the sea a large portion of the commercial marine of the United States, and to a corresponding extent enlarging that of Great Britain;" "that injuries thus received are of so grave a nature as, in reason and justice, to *constitute a valid claim for reparation and indemnification.*" In the same note he says, "The very fact of the admitted *rise in the rates of insurance on American ships* only brings us once more back to look at the original cause of all the trouble."

It is difficult to imagine a more definite statement of a purpose to require indemnification.

On the 14th February, 1866, after the presentation of the above recited complaints, Mr. Seward, writing to Mr. Adams, said, "There is not one member of this Government, and, so far as I know, not one citizen of the United States, who expects that this country will waive, in any case, the demand that we have heretofore made upon the British Government for the redress of wrongs committed in violation of international law."

And, again, on 2nd May, 1867, Mr. Seward writes to Mr. Adams, "As the case now stands, the injuries by which the United States are aggrieved *are not chiefly the actual losses sustained in the several depredations*, but the first unfriendly or wrongful proceeding of which they are but the consequences."

His Lordship also admits the mention, by Mr. Reverdy Johnson, in March 1869, of a "claim for national losses," which Lord Clarendon, in a paper published in the British Parliamentary Papers, "North America, No. 1, 1870," page 18, defines as "national, indirect, or constructive claims."

On 15th May, 1869, I instructed Mr. Motley that this Government, in "rejecting the recent Convention, abandons *neither its own claims* nor those of its citizens."

Lord Clarendon, in a despatch of 10th June, 1869, to Mr. Thornton, mentioned that Mr. Motley had assigned, among the causes which led to the rejection of the Johnson-Clarendon Treaty, that the "Convention was objected to because it embraced only the claims of individuals, and had no reference to those of the two Governments on each other."

On 25th September, 1869, writing to Mr. Motley, I said, "The number of ships thus directly destroyed amounts to nearly 200, and the value of the property destroyed to many millions. *Indirectly* the effect was *to increase the rate of insurance* in the United States, and *to take away from the United States its immense foreign commerce, and to transfer this to the merchant-vessels of Great Britain.*" "*We complain of the destruction of our merchant marine by British ships, &c.*" "The President is not yet prepared to speak of the reparation which he thinks *due by the British Government for the larger account of the vast national injuries it has inflicted on the United States.*"

In the same instruction I also wrote what seems pertinent to the present phase of the question between the two Governments. "When one Power demands of another the redress of alleged wrongs, and the latter entertains the idea of arbitration as the means of settling the question, it seems irrational to insist that the arbitration shall be a qualified or limited one."

Lord Clarendon wrote to Mr. Thornton on the 6th November, 1869, that he was officially informed by Mr. Motley that while the President at that time abstained from pronouncing on the indemnities due for the destruction of private property, he also abstained from speaking "of the reparation which he thinks due by the British Government for the *larger account of the vast national injuries* it has inflicted on the United States."

Lord Clarendon, in some "observations" on my note (Blue Book, North America, No. 1, 1870, p. 13 *et seq.*) dwelt at length on my allegation of national or indirect injuries, and characterized them as "*claims*," and resisted them as such; and in an instruction to Mr. Thornton, of 12th January, 1870, he recognizes the paper as relating to the "Alabama Claims." (Blue Book, North America, No. 1, 1870, p. 20.)

It cannot be denied that these public or national claims (now called "indirect") were prominently before the Senate of the United States when the Convention of 14th January, 1869, was under advisement in that body, nor that they were subsequently actively canvassed before the people of both countries, and especially by the press of Great Britain.

It is equally indisputable that, in my note to Mr. Motley of September 25, 1869, to which Lord Clarendon replied, there was presented the reparation which the President thought "due by the British Government for the *vast national injuries* it had inflicted on the United States."

The 36th Protocol of the Joint High Commission shows that the indirect losses were distinctly presented to the notice of the British Commissioners in the very beginning of the negotiations on the subject, and that they remained unchallenged to the signing of the Treaty.

At every stage, therefore, of the proceedings, from November 1862, when Mr. Adams "solicited redress for the *national* injuries sustained," to the date of the Treaty, this Government has kept before that of Great Britain her assertion of the liability of the latter for what are now termed the "*indirect* injuries."

The President now learns for the first time, and with surprise, that Her Majesty's

Government accepted his suggestion that the proposed Commission should treat for "the removal of the differences which arose during the rebellion in the United States, and which have existed since then, *growing out of the acts* committed by the several vessels which have given rise to the claims generically known as the 'Alabama claims,'" in the full confidence that no claim would be made by the United States for the national losses which had been continuously presented.

It is not to be denied that "differences" had arisen between the two Governments respecting these claims, and the Treaty attests that the two Governments were desirous to provide for an amicable settlement of *all causes of difference*, and for that purpose appointed their respective Plenipotentiaries. It is thus declared, in the outset, that the agreements which are about to be formulated are not intended to be an "amicable settlement," but are intended, on the contrary, "*to provide* for a speedy settlement." The subject of the submission in a solemn Treaty will not be narrower than the declared object sought to be accomplished in the reference, and that object was declared to be the removal of all *complaints and claims.*

The Treaty also attests that the differences which had arisen *growing out of* the acts committed by the several vessels which had given rise to the claims generically known as the "Alabama claims," *still* exist, and that in order to remove and adjust *all complaints and claims,* "*all* the claims *growing out of the acts* committed by the aforesaid vessels, and *generically* known" as "the 'Alabama claims,' shall be referred to a Tribunal of Arbitration."

You can bear witness that not even an intimation of the character now put forward by Earl Granville was made at any time during the deliberations of the Joint High Commission.

If Her Majesty's Commissioners were appointed, entered upon and continued the negotiations with this Government under instructions, aud with the conviction that the correspondence between Sir Edward Thornton and myself did not cover, and was not intended to cover, "as a subject of negotiation, any claim for indirect or national losses," the withholding of such instructions and the abstaining from the expression of such conviction on their part was most unfortunate, and the absence of any dissent or remonstrance against this class of the claims, either when first formally presented to the Commissioners, or during the whole negotiation, or in the Protocols, is most remarkable.

These claims were presented to the British Commissioners as solemnly and with more definiteness of specification than were presented by them to the American Commissioners the claims for alleged injuries which the people of Canada were said to have suffered from what was known as the Fenian raids; yet while the American Commissioners formally objected to the claims for the Fenian raids, as not embraced in the scope of the correspondence which led to the formation of the Commission, and recorded in the Protocols their unwillingness to enter upon the consideration, each time that they were referred to, the British Commissioners, from the first to the last, took no exception and recorded no objection to the presentation made by the American Commissioners of the claims *generically* known as the "Alabama claims," which stand on the Protocol as a "*genus*" or class of claims comprehending several species, and among them enumerating specifically the claims for indirect losses and injuries.

The positive exclusion by the Protocol of one class of claims advanced would seem to be conclusive of the non-exclusion of the other class advanced with greater definiteness and precision, but with respect to which no exception was taken and no dissent recorded.

It is difficult to reconcile the elaborate line of argument put forward by Earl Granville to show a waiver of claims for indirect losses, with the idea that, at the outset of the negotiations, Her Majesty's Government did not consider the matter of public or national injuries as the basis of an outstanding claim against Great Britain on the part of the *United States.*

If these claims had (as Lord Granville's note implies, even if it does not assert) no existence in fact, and had never been "notified" or presented, and were not within the jurisdiction of the Joint High Commission, why is so much stress laid upon their assumed relinquishment?

If, on the other hand, they had existence in fact, if they had (as the references which I have made to a correspondence extending over a long series of years establishes, I think, beyond the possibility of doubt) been frequently and persistently presented and notified to the British Government, why is not their positive exclusion from the reference to the arbitration shown? Why should an important class of claims, measured in their possibilities, according to the estimate of the British press, by fabulous amounts, be left to an *inferential* exclusion?

What interest, upon Lord Granville's theory, could Great Britain have in the proposed abandonment of such claims, or why offer any consideration therefor?

How can Her Majesty's Government contend at the same moment that the preliminary correspondence excluded the indirect or national losses, *and* that the possibility of admitting such claims as a subject of negotiation had never been entertained by Great Britain, and on the other hand that they offered and considered the "amicable settlement" of the Treaty, with its expressions and its recognition of certain rules, as the consideration and the price paid for a waiver of those claims by the United States?

I should not feel justified in referring to the expressions used by Earl Granville and other eminent Members of the British Parliament in their legislative capacities, but for his own reference thereto, and for the responsibility to which his Lordship attempts to hold you for your presence at one of their sessions, and to which I shall again refer.

But the reference made by Earl Granville to the debate in the House of Lords on the 12th of June, and his own declarations on that occasion, that "they (the indirect claims) entirely *disappear*," strengthens the position of this Government that they had been presented and were recognized as part of the claims of the United States.

A disappearance certainly implies a previous appearance.

Lord Cairns, long accustomed to close judicial investigation, and the critical examination of Statutes and of Treaties, did not agree to the proposition that there had been a relinquishment of the claims; he declared that there could not be found "one single word . . . . . which would prevent such claims being put in, and taking their chance under the Treaty."

If, therefore, you were present through the whole of the debate, you heard advanced in the House of Lords as well the opinion held by the United States as that now put forward in behalf of Great Britain.

It is true that Mr. Adams did not "define or formulate" claims for national losses. He did, however, "notify" them to Her Majesty's Government.

During the war, these claims were continually arising and increasing, and could not then be "defined," and the time for "formulating" them would not arise until a willingness to enter upon their consideration arose.

It is to be remembered that, in the spring of 1863, Her Majesty's Government exhibited some impatience when Mr. Adams communicated losses and claims of indemnification therefor, and Lord Russell, under date of 9th March of that year, wrote to Mr. Adams that "Her Majesty's Government entirely disclaim all responsibility for any acts of the 'Alabama,' and they hoped that they had already made this decision on their part plain to the Government of the United States."

In July 1863, Lord Russell referred Mr. Adams to his note of the 9th March and repeated the disclaimer of all liability, and on 14th September, in still more marked language, he expressed the hope "that Mr. Adams may not be instructed again to put forward claims which Her Majesty's Government cannot admit to be founded on any grounds of law or justice."

Lord Russell's replies to Mr. Adams afford the answer to Lord Granville's remark that "no claims (except direct claims) were ever defined or formulated."

But, although the United States under these circumstances could not consider that hour as the most favourable to a calm examination of the facts or principles involved in cases like those in question, and notwithstanding these admonitions, it became imperative on Mr. Adams still to present complaints.

On the 30th December, 1862, he had complained of acts with the intent "to procrastinate the war."

On the 14th March, 1863, he wrote to Lord Russell that "the war had been continued and sustained by the insurgents for many months past, mainly by the co-operation and assistance obtained from British subjects in Her Majesty's kingdom and dependencies." He repeats a similar complaint on 27th March, and again on 28th April, coupled with the suggestion of the responsibility attending those who "furnish the means of protracting the struggle,"

At no time during the occurrence of the events which gave rise to the differences between the two Governments, did the United States fail to present ample and frequent notice of the nature of the indirect injuries, or of their inclusion in the accountability of Great Britain.

Lord Granville admits that Mr. Johnson proposed the national claims in March 1869. I mentioned them in my instructions to Mr. Motley in May 1869; and again in that of September of that year, although I made no claim or demand for either direct or indirect injuries, I did present the *vast national* injuries, so that Lord Clarendon, in his reply, manifested no difficulty in discerning that the United States did expect and would demand the consideration of national, indirect, or consequential losses.

I can therefore have no doubt whatever that the assertion in my instruction to you

of 27th February, commented upon by Lord Granville, does "accurately represent the facts as they are shown in the correspondence between the two Governments."

Earl Granville endeavours to limit the nature and extent of the claims by an argument based upon the expression the "Alabama claims," which, he says, first occurs in a letter, which he designates.

It may be true that this "expression" appeared for the first time in the official correspondence, in the letter and at the date indicated; but his Lordship overlooks the fact, that in this letter, the language used is "the *so-called* Alabama claims," showing evidently the adoption, for convenience, of a then familiar term in common use, designating by a short generic name the whole class and variety of claims, for the various injuries of which the United States had, at different times, made complaint. The question, however, is not what was understood by the expression "Alabama claims" in 1867, but what that same expression implied in 1871, when introduced into the Treaty. It might not be difficult to show that the expression had, in 1867, acquired a definite sense far more comprehensive than that to which Earl Granville desires to restrict it. It is impossible to deny that in 1871 it was as comprehensive in signification as the United States claim it to have been.

The official correspondence of this Government which was published, and is within the knowledge of Her Majesty's Government, included the indirect injuries under the expression "the Alabama claims." They were prominently put forward in the debates and the public discussions on the rejection of the Johnson-Clarendon Treaty. The American press abounded in articles setting them forth as part of the "Alabama claims."

The President enumerated them in his Annual Message to Congress in December 1869.

The British press, in the summer of 1869, and subsequently, discussed most earnestly the indirect losses under the title of "Alabama claims."

Continental jurists and publicists discussed the national claims on account of the prolongation of the war, &c., under the head of "réclamations," having "qu'un rapport *indirect*, et nullement un rapport *direct* avec les déprédations réellement commises par les croiseurs."

In the year 1870 Professor Mountague Bernard, subsequently one of the Commissioners on the part of Her Majesty, and whose name is signed to the Treaty, published a very able, but intensely one-sided and partial defence of the British Government, under the title of "A Historical Account of the Neutrality of Great Britain during the American Civil War." The XIVth chapter of this work, as appears in the Table of Contents, is entitled the "Alabama Claims." Under this head he presents the demand made by the United States for redress for "the *national* as well as the private injuries." Professor Bernard knew the extent of our complaints and of our demands. In this work he summarises an instruction from this Department to the Minister of this country in Great Britain as presenting "the opinion of this Government" that the conduct of England "had been a virtual act of war." He says, "The estimate which the American Government has thought fit to adopt of its own claims * * * * * * is not favourable to a settlement;" that among the reasons for the rejection of the Convention of the 14th January, 1869, was the fact that it embraced *only* the claims of individuals, and had no reference to *those of the two Governments on each other*.

He sets forth that the President assigned among the reasons for his disapproval of that Convention, that "its provisions were inadequate to provide reparation for the United States in the manner and to the degree to which he considers the United States entitled to redress," and that the President further declared that he was not then (1869) "prepared to speak of the reparation which he thinks due by the British Government for the *larger account of the vast national injuries* it has inflicted on the United States;" and further that this Government held that "all these are subjects for future consideration which, *when the time for action shall come*, the President will consider with sincere and earnest desire that *all differences* between the two nations may be adjusted amicably and compatibly with the honour of each and to the promotion of future concord between them."

With this knowledge of the demand for "*national*" redress, that the American opinion regarded the conduct of Great Britain as "a virtual act of war;" with the expressed opinion that the American estimate of its claims was extravagant; with the knowledge that a previous Convention had recently been rejected, because, among other reasons, "it embraced *only* the claims of individuals, and had no reference to those of the Government; that the President expected reparation for the vast *national injuries*" which Great Britain had inflicted on the United States, and that he "held *all these subjects for future consideration when the time for action shall come;*"—when "the time for action" did come, Professor Bernard, bringing this knowledge, appeared as one of Her Majesty's Commissioners to treat on these very subjects.

It would be doing great injustice to the other eminent and distinguished statesmen and diplomatists who were his associates on the British side of the Commission, to entertain the belief that they brought less knowledge on these points than was held by Professor Bernard.

I hold that enough has been shown to establish that the British Commissioners who negotiated the Treaty did not enter upon the important duty committed to them in any ignorance of the nature or of the extent of the claims which the American Government intended to present and to have settled.

Earl Granville's efforts to limit and confine the meaning of the expression "the Alabama claims" might induce one who had not the text of the Treaty at hand to suppose that the reference to the Tribunal of Arbitration was limited by the restricted meaning which he attempts to give to the phrase "Alabama claims." But the words of the Treaty impose no such limitation—they are that "whereas *differences have arisen* between the Government of the United States and the Government of Her Britannic Majesty *and still exist, growing out of the acts* committed by the several vessels which have given rise to the claims *generically* known as the 'Alabama claims.'" Now, in order to *remove and adjust all complaints and claims* on the part of the United States, and to provide for the speedy settlement of such claims which are not admitted by Her Majesty's Government, the High Contracting Parties agree that *all* the said claims *growing out of the acts* committed by the aforesaid vessels and generically known as the "Alabama claims" be referred, &c.

All the claims *growing out of the acts committed, &c.*, are the subject of reference.

That which grows out of an act is not the act itself; it is something consequent upon or incident to the act,—the result of the act: and whether the claims to which Her Majesty's Government now take exception be the results of the acts committed by the vessels, is in the opinion of this Government for the decision of the Arbitrators.

After the positive declaration of Earl Granville, that it "never could have been expected" that Her Majesty's Government would accept the proposition of payment of a gross sum in satisfaction of all our claims, it is apparent that an exposition, at this time, of the reasons which led the President to hope that the amicable settlement which he proposed, coupled with the suggestion of large pecuniary concessions on our part, would be made, will not tend to remove the differences now existing between the two Governments respecting the jurisdiction of the Geneva Tribunal.

I as deeply regret that Her Majesty's Government cannot understand upon what that hope was founded, as I deplore what now appears to have been the predetermination of Her Majesty's Government to reject every proposal which involved an admission of any liability on the part of Great Britain.

Another proposal, having no similitude to the previous one submitted by us, was made by Her Majesty's Commissioners. They accepted without objection the American statement of the subject-matter in dispute as it was made, and they proposed instead of the "amicable settlement" offered by the American Commissioners, "a mode of settlement" by arbitration—a litigation, a lawsuit, in which Great Britain should deny all liability to the United States for all the injuries complained of. After sundry modifications, their proposal was accepted by the United States, who were thus compelled to bring before the Tribunal the same presentment of their losses which they had laid before Her Majesty's Commission. The subject-matter of the submission made by the American "Case" to the Geneva Tribunal differs in no particular from that which was accepted as the statement of the American claims, without objection on the part of the British members of the Joint High Commission.

The President is now, for the first time, authentically informed that a waiver by this Government of the claims for indirect losses which were formally presented, was, in the opinion of Her Majesty's Government, also contained in this second proposal, was a necessary condition of the success of the negotiation, and that "it was in the full belief that this waiver had been made that the British Government ratified the Treaty." Such a relinquishment of a part of the claims of this Government is now made by Earl Granville the pivot and real issue of the negotiation. He appears to imply that the price paid by Her Majesty's Government to obtain that waiver was the concession referred to in his Lordship's note, and which, he says, would not have been expected by this Government "if the United States were still to be at liberty to insist upon all the extreme demands which they had at any time suggested or brought forward."

Here, again, is a clear intimation that Her Majesty's Government were not in ignorance of the character of our demands, but that they were well "*known*" and that the consideration to be paid for their waiver (whether real or imaginary) had been deliberately determined.

Is it not surprising that such "extreme demands" should be waived on the one hand, and such "concessions" made on the other, without a word of reference or suggestion that the one was conditioned on the other?

You can bear witness that at no time during the deliberations of the Joint High Commission was such an idea put forward by Her Majesty's Commissioners.

The Protocols are utterly silent on this subject.

That no such relinquishment was incorporated into the text of the Treaty is clear enough.

Why not, if thus deemed at the time by Her Majesty's Government the hinge and essential part of the Treaty?

What are termed the "concessions" on the part of Great Britain appear in the Treaty. If the relinquishment by the United States of a part of their claim was the equivalent therefor, why is not that set forth?

Throughout the Treaty are to be found reciprocal grants, or concessions, each accompanied by its reciprocal equivalent.

How could it happen that so important a feature of the negotiation as this alleged waiver is now represented to be, was left to inference, or to argument from intentions never expressed to the Commissioners or to the Government of the United States, until after the Treaty was signed?

The amplitude and the comprehensive force of the Ist Article (or the granting clause) of the Treaty did not escape the critical attention of Her Majesty's Commissioners; but was any effort made to limit or reduce the scope of the submission, or to exclude the indirect claims?

You were informed in my instruction of February 27 that this Government does not consider the Treaty as of itself a settlement, but as an agreement as to the mode of reaching a settlement. To that opinion the President adheres. He cannot admit that the Treaty provision for a settlement is, in substance or legal effect, the same as the "amicable settlement" spoken of in the Conference held on the 8th of March, as is set forth in the Protocol. The differences between the two stand out clear and broad. One would have closed up, at once and for ever, the long-standing controversy; the other makes necessary the interposition of friendly Governments, a prolonged, disagreeable, and expensive litigation with a powerful nation, carried on at a great distance from the seat of this Government, and under great disadvantages; and, more than all, it compels the re-appearance of events and of facts for the keeping of which in lifeless obscurity the United States were willing to sacrifice much, as they indicated in their proffer to accept a gross sum in satisfaction of *all* claims.

The United States can assent to no line of argument which endeavours to transfer the waiver of claims for indirect injuries (implied from their withholding the estimate of the amount of such claims) from the rejected proposal of the American Commissioners for a settlement *à l'amiable* by the Joint High Commission, and to incorporate it, *sub silentio*, in the Arbitration proposed by the British Commissioners.

The offer of this Governnent to withhold any part of its demands expired and ceased to exist when the acceptance of the proposal which contained the offer was refused. It was never offered except in connection with the proposal that the Joint High Commission should agree upon a gross sum to be paid in satisfaction of all the claims, and then it was repelled. It was never again suggested from any quarter. It is impossible for Her Majesty's Government to fix upon a moment of time when there was an agreement of the Contracting Parties respecting such a waiver as that to which Earl Granville refers.

To the suggestion of doubt contained in the note of Lord Granville whether "it would be advantageous to either country" to treat claims of the nature of those now under discussion "as proper subjects of international arbitration," I can only reply that for all practical purposes argument upon this question is suspended, inasmuch as in our judgment Great Britain and the United States have bound themselves respectively by the Treaty to make such submission.

The first Article of that solemn instrument recites and declares that "*all* the said claims growing out of acts committed by the aforesaid vessels, and generically known as the 'Alabama claims,' shall be referred to a Tribunal of Arbitration." Earl Granville admits that the foregoing are "the words in which the subject matter of the reference to arbitration agreed upon is defined."

If the Case of the United States, as presented at Geneva, contain claims not "growing out of acts committed" by the aforesaid vessels, then such claims are not within the reference, and must be so adjudged.

In like manner, if any of the claims set forth in the American Case were not *at the*

date of the correspondence between Sir Edward Thornton and myself (in January and February, 1871), "generically known" as part of the Alabama claims, they are not within the jurisdiction of the Tribunal, and must be so adjudged.

The President admits unreservedly that every item of the demand presented at Geneva must, within the meaning of the Treaty, be a "claim"—that it must be one of the claims "generically known as the Alabama claims"—and that it must grow out of acts committed by the vessels which have given rise to the claims thus generically known.

Which of the claims presented by the United States at Geneva answers these requirements, and is well founded, according to the true intent and meaning of the Treaty, is not to be determined by either party litigant, but is a question for the Tribunal to decide.

I have already referred to the comprehensiveness which the expression "Alabama claims" had acquired when it was used in the correspondence, and was incorporated in the Treaty in 1871.

Lord Granville says, "The word *generically* naturally signifies that all the claims intended were *ejusdem generis.*" His argument would require them to be *ejusdem speciei.*

The word was designedly used to embrace a "genus," a class of claims divided into several species: "genus est id, quod sui similes communione quadam, *specie autem differentes* duas aut plures complectitur partes."

The direct losses from destruction of property are of one species: they differ in dates, localities and amounts; they do not differ in character or in "species."

Referring to my remark in the note to you of 27th February, that the indirect injuries are covered by one of the alternatives of the Treaty, Earl Granville does not perceive what "alternative" in the Treaty covers these claims.

This Government is of the opinion that they are covered by the alternative power given to the Tribunal of Arbitration of awarding a sum in gross, in case it finds that Great Britain has failed to fulfil any duty, or of remitting to a Board of Assessors the determination of the validity of claims presented to them, and the amounts to be paid.

By Article VII, in case the "Tribunal find that Great Britain has failed to fulfil any duty or duties as aforesaid, it may, if it think proper, proceed to award a sum in gross to be paid by Great Britain to the United States for all the claims referred to it."

If Great Britain be found by the Tribunal to have failed of any of its duties, it is clearly within the power of the Tribunal, in its estimate of the sum to be awarded, to consider all the claims referred to it, whether they be for direct or for indirect injuries. There is no limitation to their discretion, and no restriction to any class or description of claims.

The United States are "prepared to accept the award, whether favourable or unfavourable to their views. They are confident that it shall be just."

Earl Granville refers to the allusion made in my instruction to you of 27th February to the presentation by Her Maj sty's Agent to the Claims Commission now sitting in this city of a claim for a part of the Confederate Cotton Loan, the express exclusion of which from the consideration of the Commission his Lordship admits had been mutually agreed upon in the negotiations which preceded the appointment of the High Commissioners, and was provided for by the wording of the Treaty.

He thinks, however, that there is no analogy between the proceedings before the Washington Commission and those before the Geneva Tribunal—such, at least, appears to be the inference to which his argument is intended to lead.

He cites from Article XIV the power given to the Claims Commissioners "to decide in each case whether any claim has or has not been duly made preferred and laid before them, either wholly or to any extent, according to the true intent and meaning of the Treaty," and he adds that "no similar words" are used as to the powers of the Geneva Tribunal.

It is true that "no similar words" are used, but his Lordship has overlooked the much broader and more comprehensive powers given to the Geneva Arbitrators, by the words in Article II, authorizing them "to examine and decide all questions that shall be laid before them on the part of the Governments of the United States and of Her Britannic Majesty respectively."

These grants of power are to be taken in connection with the subject matter referred.

The subject matter of the reference to the Washington Commission is the claims for alleged wrongful acts by either Government upon the persons or property of individuals or of corporations, citizens or subjects of the other Government.

Articles XII and XIV prescribe certain requirements as to the manner, the channel and the time of presentation of the claims to be examined.

The words "made, prepared and laid before" have no possible reference to the nature, the character or the groundwork of the claim, and can be construed only as

applying to each claim which is a proper subject of reference, the test of the requirements of the Treaty, with respect to the manner, the channel and the time of its being brought before the Commission.

The subject-matter referred to the Arbitrators at Geneva is "all the claims growing out of acts committed by the vessels which have given rise to the claims generically known as the 'Alabama claims,' in order to remove and adjust all complaints and claims on the part of the United States, and to provide for the speedy settlement of such claims."

In connection with such claims, and with the purpose expressed in the Treaty, the Arbitrators have the broad grant of power to "examine and decide *all questions* that shall be laid before them on the part of" either Government.

If Lord Granville can find, in the words he has quoted, power in the Washington Commission to determine whether or not a claim presented is within its jurisdiction, it will be difficult to deny the same power to a Tribunal to which the more comprehensive grant is made in the words of the Article II.

The allusion, in my instruction of 27th February, to the Confederate Cotton Loan was, to the fact that a claim, one of a class for whose exclusion his Lordship admits that expressions had been used in the negotiations which preceded the appointment of the High Commission, and were also used in the Treaty, was presented by Her Majesty's Government (for by the Treaty a claim can only be laid before the Commission on the part of the Government), and that, when the United States remonstrated and requested the British Government to withdraw the claim, their remonstrance was unheeded, and the claim was pressed to argument; that the United States demurred before the Commission to its jurisdiction, and that the decision of the Commission disposed of what might have been a question of embarrassment.

The claim was put forward as a test case, and was one of a class involving upwards of fifty millions of dollars.

My allusion to it was not in the nature of a complaint of its presentation.

Earl Granville has kindly furnished certain dates. From his note we find that it was on the 21st November that he learned that the United States remonstrated against the presentation of this class of claims; that *prior* to the 6th December he had ascertained from Sir Edward Thornton (who, it is known, had left England on his return to the United States as early as the 28th day of November) that claims of this class were intended to be excluded, and that the Treaty contained words inserted for that object; that the remonstrance and request of the United States were not considered by Her Majesty's Government until the 11th of December; that a decision thereon was not made until the 14th (on which day, I may add, the Agent and Counsel of the British Government brought the case to trial in Washington); and that the announcement of the decision of Her Majesty's Government was not made to you until the 16th December, two days after the case had been adjudged.

These dates illustrate my allusion to this case. The United States calmly submitted to the Commission the decision of its jurisdiction over a claim involving in its principle the question of liability for many millions of dollars, which it is admitted had been expressly agreed to be withheld from the province of the Commission, and thereby avoided jeoparding the Treaty, and the serious embarrassment which might have resulted from their undertaking to become the judges in their own behalf.

I cannot pass over without notice the allusion made by Earl Granville to your presence in the House of Lords on the occasion of the debate of the 12th of June last, and the fact that you did not at any time challenge either of the conflicting interpretations of the Treaty expressed on that occasion. I may add that similar reflections upon the conduct of this Government in that relation uttered by prominent statesmen and newspapers in Great Britain have been made public, and thus brought to my notice.

To all of these it is sufficient to say that the President does not hold it as any part of his duty to interfere with the differences in the Parliament or the public press of Great Britain respecting the true construction of the Treaty. The utterances in Parliament are privileged, the discussion in that high body is looked upon by us as a domestic one, of which this Government has no proper cognizance. If it is bound to take notice, it has the right to remonstrate.

To concede either to a foreign State, would be on the part of a Parliamentary Government the abandonment of the independence which is its foundation, and its great security and pride.

Had you interfered therefore, either to remonstrate or to demand explanation, you would have exposed yourself and your Government to the very just rebuke, which the United States has had occasion to administer to Diplomatic Agents of foreign Governments, who, in ignorance or in disregard of the fundamental principles of a constitutional Government

with an independent Legislature, have asked explanations from this Government concerning the debates and proceedings of Congress, or of the communication by the President to that body.

You had a right to assume that if Her Majesty's Government desired any official information from you or your Government respecting the Treaty, or desired to convey any information to you or to your Government, they would signify as much in the usual forms of diplomatic intercourse, as was done by Lord Granville in his note to you of the 3rd February.

Certain it is, that it would have been in violation of recognized diplomatic proprieties had you, on the occasion referred to, taken sides with either of the opposing views of the Treaty uttered on that occasion in Parliament.

Further than this, it appears to me that the principles of English and American law (and they are substantially the same) regarding the construction of Statutes and of Treaties, and of written instruments generally, would preclude the seeking of evidence of intent outside the instrument itself.

It might be a painful trial on which to enter, in seeking the opinions and recollections of parties, to bring into conflict the differing expectations of those who were engaged in the negotiation of an instrument.

While the United States have nothing to fear from departing from the eminently just rule of law to which allusion has been made, it abstains from such departure.

Very much of the matter so elaborately and ingeniously presented in the Memoranda attached to the note of Earl Granville could be fitly and appropriately addressed by the British Government to the Tribunal which is to pass upon the points presented therein. It would require amplification, if not connection of statement, to make it present all the facts essential to a correct judgment, and might require a reply, before that Tribunal. It would certainly require explanation as to many of its presentations, and its logic would be denied; but it does not seem to require a reply from me in the form of diplomatic correspondence.

As to what is contained in Part III of that Memorandum, I repeat in substance what I mentioned in my note to you on this subject of 27th February, that the indirect losses of this Government, by reason of the inculpated cruisers, are set forth in the American Case as they were submitted to the Joint High Commission in the first discussion of the claims on 8th March, and stand in the Protocol approved 4th May. They were presented at Geneva, not as claims for which a specific demand was made, but as losses and injuries consequent upon the acts complained of, and necessarily to be taken into equitable consideration on a final settlement and adjudication of all the differences submitted to the Tribunal. The decision of what is equitable in the premises, the United States sincerely, and without reservation, surrender to the arbitrament designated by the Treaty.

What the rights, duties and true interests of both the contending nations, and of all nations, demand shall be the extent and the measure of liability and damages under the Treaty, is a matter for the supreme determination of the Tribunal established thereby.

Should that august Tribunal decide that a state is not liable for the indirect or consequential results of an accidental or unintentional violation of its neutral obligations, the United States will unhesitatingly accept the decision.

Should it, on the other hand, decide that Great Britain is liable to this Government for such consequential results, they have that full faith in British observance of its engagements, to expect a compliance with the judgment of the Tribunal which a solemn Treaty between the two Powers has created in order to remove and adjust all complaints and claims on the part of the United States.

To the judgment of the Tribunal, when pronounced, the United States will, as they have pledged their faith, implicitly bow. They confidently expect the same submission on the part of the great nation with which they entered into such solemn obligations.

I am, &c.

(Signed) HAMILTON FISH.

No. 6.

Earl Granville to Sir E. Thornton.

Sir, *Foreign Office, May* 1, 1872.

GENERAL SCHENCK read to me this day a despatch which he had received from Mr. Fish in reply to my letter of the 20th of March, respecting the arbitration on the "Alabama" claims under the Treaty of Washington.

At my request General Schenck gave me a copy of this despatch, which I told him I would submit to my colleagues.

A copy is inclosed for your information.*

I am, &c.
(Signed) GRANVILLE.

No. 7.

Earl Granville to General Schenck.

Sir, *Foreign Office, May* 6, 1872.

I HAVE the honour to acknowledge the receipt of Mr. Fish's despatch of the 16th of April, which you communicated to me on the 1st instant. I abstain from addressing any observations to you on the tenour of that despatch, pending the result of the communications which are now passing between us, and which it is the earnest hope of Her Majesty's Government may lead to a satisfactory settlement of the questions under discussion between our two Governments.

I am, &c.
(Signed) GRANVILLE.

No. 8.

Earl Granville to Sir E. Thornton.

Sir, *Foreign Office, May* 13, 1872.

HER Majesty's Government have refrained from continuing an argumentative discussion with the Government of the United States upon the scope and intention of the Articles in the Treaty of Washington relating to the arbitration on the "Alabama claims."

There are, however, some passages in Mr. Fish's despatch on this subject of the 16th ultimo, upon which it seems desirable that, for your own information and for use in any future communications with the Government of the United States, you should be put in possession of the views of Her Majesty's Government.

In the first place, Mr. Fish takes exception to the assertion in my letter of the 20th of March, that although it is true that in some of the earlier letters of Mr. Adams vague suggestions were made as to possible liabilities of this country, extending beyond the direct claims of American citizens for specific losses arising from the capture of their vessels by the "Alabama," "Florida," "Shenandoah," and "Georgia," no claims were ever defined or formulated, and certainly none were ever described by the phrase "Alabama claims," except these direct claims of American citizens.

Mr. Fish states that I cannot be supposed to intend more than to say that the claims for indirect or national losses and injuries were not "formulated" by the United States' Government, and the amount thereof set forth in detail and as a specific demand.

I did not, however, confine myself to saying that no claims of this nature were ever defined or formulated, but added that no such claims had ever been "described" as "Alabama claims."

Mr. Fish admits that the claims for indirect or national losses were not formulated or defined, but proceeds to cite various passages in the correspondence in which he considers that they were brought forward. He does not mention one instance in which they were described as "Alabama claims."

The fact is that, throughout the correspondence, the representations made by the United States' Government respecting the actual claims for injuries sustained by American citizens from the depredations of the "Alabama" and other cruizers were interspersed with complaints of the supposed premature recognition of the belligerent rights of the Confederate States by the issue of Her Majesty's Proclamation of Neutrality, and of the proceedings of blockade-runners.

Nearly all the passages cited by Mr. Fish will be found, when read with their context, to have reference to these complaints and to the indefinite suggestions of liability founded on them. On the other hand, on turning to the Memorandum inclosed in my letter of the 20th of March, it is apparent that the phrase "Alabama claims" has uniformly been used to distinguish the actual claims on account of the acts committed by the "Alabama" and the other cruizers from these complaints of the "attitude" assumed by Great Britain.

Mr. Fish lays great stress on the statement in Mr. Adams' letter of the 20th of

* No. 5.

November, 1862, that he was instructed to "solicit redress for the *national* and private injuries already thus sustained." The injuries *thus* sustained were, as appears by the inclosures in Mr. Adams' letter, the destruction of the "Ocmulgee" and other vessels by the "Alabama." As already pointed out in the Memorandum, Mr. Adams spoke merely of the "depredations committed on the high seas upon merchant-vessels" by the "Alabama," and of "the right of reclamation of the Government of the United States for the grievous damage done to the property of their citizens," and referred to the Claims Commission under the Treaty of 1794 as a precedent for awarding compensation. There is not a word in the letter to suggest any indirect or constructive claims.

In the despatch of the 19th of February, 1863, Mr. Seward, in a similar manner, uses the term "its claims," with obvious reference to the claims put forward by the United States on behalf of American citizens: those, indeed, being the only claims that had been indicated in the correspondence between Mr. Adams and Lord Russell to which he was alluding.

I must remark that this despatch of the 19th of February, 1869, was not communicated to the British Government.

Mr. Fish has omitted some important words in the next passage which he adduces, from Lord Russell's despatch to Lord Lyons of the 27th of March, 1863.

The despatch gives an account of a conversation with Mr. Adams, at the close of which Lord Russell said that it was his belief "that if all the assistance given to the Federals by British subjects and British munitions of war were weighed against similar aid given to the Confederates, the balance would be greatly in favour of the Federals.

"Mr. Adams totally denied this proposition. But above all, he said, there is a manifest conspiracy in this country, of which the Confederate loan is an additional proof, to produce a state of exasperation in America, and thus bring on a war with Great Britain with a view to aid the Confederate cause, and secure a monopoly of the trade of the Southern States, whose independence these conspirators hope to establish by these illegal and unjust measures."

Mr. Fish omits the words "of which the Confederate Loan is an additional proof," which, taken with the context, show that Mr. Adams was then speaking, not of the case of the "Alabama," but of the assistance in money and materials which he considered was improperly rendered to the Confederate States by blockade-running and the Cotton Loan.

Mr. Adams' letters of the 7th of April and 20th of May, and Lord Russell's letter of the 4th of May, 1865, are commented on in the Memorandum, Part II, and it is unnecessary for me to make any further observations on them, as Mr. Fish does not reply to those which I have already offered. Whatever may have been the purpose to require indemnification, no claim was presented or notified, and the grievances of which complaint was made were in no way identified with the "Alabama claims."

The despatch of the 14th of February, 1866, was not communicated to Her Majesty's Government; but, on referring to the 3rd volume of the Appendix to the American Case, p. 628, in which it is given, it appears to refer to the possibility of fresh negotiations in regard to a revision of the Neutrality Laws and to Lord Russell's refusal of arbitration. Both these subjects are referred to at page 625, and the despatch accordingly concludes, after the paragraph quoted by Mr. Fish, by saying, "I think that the country would be unanimous in declining every form of negotiation that should have in view merely prospective regulations of national intercourse, so long as the justice of our existing claims for indemnity is denied by Her Majesty's Government, and those claims are refused to be made subject of friendly but impartial examination."

There can be no pretence that the claims which Lord Russell refused to submit to arbitration extended to indirect claims. The proposal arose in connection with "a claim for the destruction of the ship 'Nora' and other claims of the same kind" (see Mr. Adams' letter of the 23rd of October, 1863), and Lord Russell, in reply to it, stated that Her Majesty's Government must decline "either to make reparation and compensation *for the captures made by the 'Alabama,'* or to refer the question to any foreign State."

I have already pointed out that no importance can be attached to the claims of private citizens being spoken of by Mr. Seward as "our claims." The "claims of citizens of the United States against Great Britain for damages, &c., by means of depredations upon our commercial marine committed on the high seas by the 'Sumter,' the 'Alabama,' the 'Florida,' the 'Shenandoah,' &c.," of which a summary was annexed to the despatch from Mr. Seward to Mr. Adams, of the 27th of August, 1866, communicated to Lord Stanley, and which are undeniably private claims, are mentioned in that despatch as "the claims upon which we insist," and "our claims."

The next despatch referred to, that from Mr. Seward to Mr. Adams, of the 2nd of May, was likewise not communicated to Her Majesty's Government. The context clearly shows that the "injuries" from "the first unfriendly or wrongful proceeding" referred to the "concession of belligerency." Mr. Seward, in a preceding paragraph, says, "I feel quite certain that the balance of faults has been on the side of Great Britain. First, the concession of belligerency ought not to have been made; second, upon our earnest appeals it ought to have been earlier rescinded." The despatch goes on to state the conviction of the American people that "the proceedings of the British Government in recognizing the Confederacy were not merely unfriendly and ungenerous, but entirely unjust."

In another part of Mr. Fish's despatch complaints (not claims) are noticed as having been made by Mr. Adams on the 30th of December, 1862, 14th and 27th of March, 1863, and 28th of April.

The "acts" complained of in the first extract will be seen, on reading the entire passage, to have been, that "vessels owned by British subjects have been and are yet in the constant practice of departing from British ports laden with contraband of war and many other commodities, with the intent to break the blockade and to procrastinate the war."

The despatch of the 14th of March, 1863, refers to certain intercepted correspondence relating to the proceedings and supposed intentions of Confederate agents, blockade-runners, and to the Cotton Loan.

The complaint on the 27th of March, as I have already explained, also referred to the Cotton Loan and to these proceedings of Confederate agents.

The despatch of the 28th of April begins, "I am instructed to inform your Lordship that the Government of the United States has heard with surprise and regret of the negotiation of a loan in this city;" and proceeds to state that "this transaction must bring to an end all concessions, of whatever form, that may have been heretofore made for mitigating or alleviating the rigors of the blockade in regard to the shipment of cotton;" and concludes, "I am sure that it is with the greatest reluctance it" [the United States' Government] "finds itself compelled by the offensive acts of apparently irresponsible parties, bent upon carrying on hostilities under the shelter of neutrality, to restrict rather than to expand the avenues of legitimate trade. The *responsibility for this*" [*i.e.*, for this restriction] "must rest mainly upon those who, for motives best known to themselves, have laboured and continue to labour so strenuously and effectually to furnish the means for the protraction of the struggle."

I have reviewed the passages cited by Mr. Fish in support of his argument, that the "Alabama claims" included other claims than those for the actual losses of American citizens, in order to show how little support they afford to it; but this is almost superfluous, as a conclusive answer is afforded by the very volume of despatches from which Mr. Fish has taken these extracts.

Mr. Reverdy Johnson in a despatch to Mr. Seward dated February 17, 1869 (page 767), containing a report of his negotiations with Her Majesty's Government, states, "I hear that in some quarters objections are made to the Claims Convention, for which I was not prepared.

"1. It is said, I am told, that the claims to be submitted should not be all that have arisen subsequent to July 1853.

"2. That no provision is made for the submission of any losses which our Government, as such, may have sustained by the recognition of the insurgents as belligerents, and the depredations upon our commerce by the 'Alabama' and other vessels . . .

"As regards the second objection," he urges, "I am at a loss to imagine what would be the measure of the damage which it supposes our Government should be indemnified for. How is it to be ascertained? By what rule is it to be measured? A nation's honour can have no compensation in money, and the depredations of the 'Alabama' were of property in which our nation had no direct pecuniary interest. If it be said that those depredations prevented the sending forth of other commercial enterprises, the answer is twofold: first, that if they had been sent forth, the nation would have had no direct interest in them; and, second, that it could not be known that any such would have been undertaken. Upon what ground, therefore, could the nation demand compensation in money on either account? And if it was received, is it to go into the Treasury for the use of the Government, or to be distributed amongst those who may have engaged in such enterprises, and how many of them are there, and how are they to be ascertained? France recognized the insurgents as belligerents, and this may have tended to prolong the war. This, too, it may be said, was a violation of her duty, and affected our honour. If we can claim indemnity for our nation for such a recognition by England, we can equally claim it of France. And who has suggested such a claim as that?

"But the final and conclusive answer to these objections is this:

"1. That at no time during the war, whether whilst the 'Alabama' and her sister ships were engaged in giving our marine to the flames, or since, no branch of the Government proposed to hold Her Majesty's Government responsible, except to the value of the property destroyed and that which would have resulted from the completion of the voyages in which they were engaged. The Government never exacted anything on its own account. It acted only as the guardian and protector of its own citizens, and therefore only required that this Government should pay their losses, or agree to submit the question of its liability to friendly arbitrament. To demand more now, and particularly to make a demand to which no limit can well be assigned, would be an entire departure from our previous course, and would, I am sure, not be listened to by this Government, or countenanced by other nations. We have obtained by the Convention in question all that we have ever asked; and with perfect opportunity of knowing what the sentiment of this Government and people is, I am satisfied that nothing more can be accomplished. And I am equally satisfied that if the Convention goes into operation, every dollar due on what are known as the 'Alabama claims' will be recovered."

If Mr. Johnson was mistaken in the view thus decidedly expressed, it might be expected that some notice would have been taken of so important an error. But Mr. Seward's reply of March 3, 1869, gives no intimation of any dissent whatever. He writes, "Your despatch No. 112 of the 17th ultimo, relative to the Protocol and Convention recently signed by you on behalf of this Government, has this day been received and submitted to the President. He directs me to say, in reply, that it is regarded as an able and elaborate paper, and would have been communicated to the Senate had it not reached here at the close of the present Session and that of his Administration."

Thus, according to an uncontradicted statement in an official despatch from the United States' Minister in London to the Government at Washington, officially published by the United States' Government, that Government had "never exacted anything on its own account," and the claims "*known as the 'Alabama claims'*" had been limited during the whole war, and in the subsequent negotiations up to February 1869, to the claims for the value of the property destroyed, and that which would have resulted from the completion of the voyages in which the captured vessels were engaged.

Mr. Johnson confirmed the statement in his despatch, in a letter to Mr. J. A. Parker, published in the "New York Journal of Commerce," 30th November, 1870: "My instructions, as did those of Mr. Adams, looked exclusively to the adjustment of individual claims, and no alleged commission or omission of the British Government of her duty to the United States pending the war was given in any part of the correspondence between the two Governments as having any influence upon other than individual claims."

It is not easy to understand how a class of claims which had been known under one appellation for seven years could have suddenly acquired a far wider and more onerous significance.

Mr. Fish relies on Mr. Reverdy Johnson's proposed amendment of the Clarendon-Johnson Convention, on these public or national claims having been prominently before the Senate when that Convention was under advisement (by which it is to be presumed he refers to Mr. Sumner's speech, the only part of the proceedings which was published), on the President's Message of December, 1869, and on his despatch to Mr. Motley of the 25th of September, 1869.

Mr. Johnson's proposal, however, was not to include national claims under the head of "Alabama claims," but to superadd them by inserting certain words after the words "agree that," in the first Article of the Convention.

Had his proposal been adopted, the Article would have stood thus: "The High Contracting Parties agree that"—here comes the insertion—"[all claims on the part of Her Majesty's Government upon the Government of the United States, and all claims of the Government of the United States upon Her Majesty's Government, and] all claims on the part of subjects of Her Britannic Majesty upon the Government of the United States, and all claims on the part of citizens of the United States upon the Government of Her Britannic Majesty, including the so-called 'Alabama claims,'" &c.

Mr. Johnson avowedly made this proposal, as Lord Clarendon informed you in his despatch of the 22nd of March, 1869, to introduce "claims to compensation on account of the recognition by the British Government of the belligerent rights of the Confederates," which the British Government might balance by "claims to compensation for damages done to British subjects by American blockades, which, if the Confederates were not belligerents, were illegally enforced against them."

Mr. Johnson's belief was that the Convention was unacceptable because it did not include national claims on account of the recognition of belligerent rights, which he

purposely distinguished from the "Alabama claims," and was in no respect therefore inconsistent with his despatch of the 17th February, limiting the meaning of that expression. The information on which he founded that belief was derived, as he reported to Mr. Fish on the 9th of April, 1869, from a private source; and his suggestion made in the same despatch, that instructions should be given to him to endeavour to supply the omission, was not favourably entertained by the United States' Government, who telegraphed in reply that "as the Treaty was then before the Senate no change was deemed advisable."

The only intimation, as I have stated, which Her Majesty's Government possessed of the propriety of making any demands for national losses having been debated or considered by the Senate, was, by the publication of Mr. Sumner's speech, in which he urged that England was liable for national injuries of the most extensive character; but these injuries were rhetorically deduced, chiefly from the Proclamation of Neutrality, and the supplies furnished through the blockade.

The effect of Mr. Sumner's speech in England was reported by Mr. Johnson to Mr. Fish on the 10th of May:—"If an opinion may be formed from the public press, there is not the remotest chance that the demands contained in that speech will ever be recognized by England. The universal sentiment will be found adverse to such a recognition. It would be held, as I hear from every reliable source, to be an abandonment of the rights, and a disregard of the honour of this Government."

Her Majesty's Government never learnt that Mr. Sumner's views were endorsed by the Government of the United States.

Mr. Fish next mentions his instructions to Mr. Motley of the 25th of September. These instructions, however, were not communicated to Her Majesty's Government, and when Mr. Motley told Lord Clarendon, on the 10th of June, 1869, that the Convention "was objected to because it embraced only the claims of individuals, and had no reference to those of the two Governments on each other; and, lastly, that it settled no question, and laid down no principle," he proceeded to speak of the "risk and responsibility" incurred by a Government which conferred belligerent rights, and thus his representations naturally connected themselves with Mr. Johnson's proposal with regard to the mutual claims of the two Governments.

Mr. Fish admits that, in his despatch of the 25th of September, he "made no claim or demand for either direct or indirect injuries."

These indirect injuries could not therefore have received the designation of "Alabama *claims*" from that despatch.

Indeed, on examining the extracts which he gives from it with their context, it is apparent that the "vast national injuries" which he states that he presented in it are ascribed to other causes than the acts committed by the Confederate cruizers.

The first extract, beginning "The number of our ships thus directly destroyed," &c., follows a paragraph complaining of the Proclamation of Neutrality:—"In virtue of the Proclamation, maritime enterprises in the ports of Great Britain, which would otherwise have been piratical, were rendered lawful, and *thus* Great Britain became, and to the end continued to be, the arsenal, the navy yard, and the treasury of the Confederacy.

"A spectacle was *thus* presented without precedent or parallel in the history of civilized nations, Great Britain," &c.

The second extract runs thus:—

"We complain that the insurrection in the Southern States, if it did not exist, was continued, and obtained its enduring vitality, by means of the resources it drew from Great Britain. We complain that, by reason of the imperfect discharge of its neutral duties on the part of the Queen's Government, Great Britain became the military, naval and financial basis of insurgent warfare against the United States. We complain of the destruction of our merchant marine by British ships, manned by British seamen, armed with British guns, dispatched from British dockyards, sheltered and harboured in British ports. We complain that, by reason of the policy and acts of the Queen's Ministers, injury incalculable was inflicted on the United States."

The third extract, respecting the vast national injuries, is followed in the despatch by a passage explaining the various causes of injury, which Mr. Fish has omitted to notice, "Nor does he attempt now to measure the relative effect of the various causes of injury, as whether by untimely recognition of belligerency, by suffering the fitting out of rebel cruizers, or by the supply of ships, arms, and munitions of war to the Confederates, or otherwise, in whatsoever manner."

Lord Clarendon's memorandum of observations on Mr. Fish's despatch, like the despatch itself, touched on various topics besides that of the Confederate cruizers, and Her Majesty's Government cannot admit that, because Mr. Motley read a despatch to

Lord Clarendon on the 12th of January, 1870, stating that Mr. Fish had not included it "among the papers respecting the 'Alabama claims,'" therefore all the subjects mentioned in it were "Alabama claims."

Still less can they admit that because Mr. Bernard, in the 14th Chapter of his work, gave certain extracts from Mr. Fish's despatch, under the head of "Alabama claims," that despatch became the standard by which the claims known as the "Alabama claims" was to be measured. It happens moreover that, in the extracts given by Mr. Bernard in the chapter to which Mr. Fish refers, the three passages cited by Mr. Fish in his present despatch as relating to indirect injuries and national losses are omitted.

It only remains to notice the President's Message of December 1869. This Message does not mention the "Alabama claims," but speaks of the "injuries resulting to the United States by reason of the course adopted by Great Britain during our late Civil War."

I have thus been able to show upon the testimony of Mr. Reverdy Johnson, the American Minister, corroborated on examination by the extracts cited by Mr. Fish, that for the first seven years of the discussion up to 1869, none but direct claims were "known as 'Alabama claims:'"

And that, in the only authoritative document in which national indirect injuries were mentioned, up to the time of the recent negotiation, they were not described as "Alabama claims," or as claims of any description.

Mr. Fish states that "continental jurists and publicists discussed the national claims on account of the prolongation of the war under the head of 'réclamations,' having 'qu'un rapport *indirect*, et nullement un rapport *direct* avec les déprédations réellement commises par les croiseurs.'"

The quotation appears to be taken from a pamphlet by Dr. Blüntschli, entitled "Opinion impartiale sur la question de 'l'Alabama' et sur la manière de la résoudre." In this pamphlet Dr. Blüntschli reviews the various points mentioned by Mr. Sumner in his speech in the Senate on the 13th of February, 1869, including the recognition of belligerency. In the 6th Section he discusses the effects attributed by Mr. Sumner to the acts of the "Alabama" and other vessels, and states that all the effects are attributable, in the first place, to the cruizers themselves, and not to the British Government. "Sa faute ne consiste pas à avoir équipé et appareillé les corsaires, mais *à n'avoir pas empêché* leur armement et leur sortie de son territoire neutre. *Mais cette *faute** n'a qu'un rapport *indirect* et nullement un rapport *direct* avec les déprédations réellement commises par les croiseurs."† Dr. Blüntschli's remark did not, therefore, relate to claims for indirect losses, nor does the word "réclamations" occur in the sentence, in the paragraph, or in the whole section from which the quotation is taken. All that he says is, that the default on the part of Great Britain, by which the cruizers escaped, has but an indirect, and in no way a direct, connection with the depredations actually committed by them.

Mr. Fish gives as a reason for no claims for national losses having been "defined" or formulated, that Lord Russell objected, in July 1863, to any claims being put forward. As Mr. Adams continued to present claims for the destruction of property by the "Alabama" in August, September, and October of that year, and numbers of similar direct claims have since been presented, Her Majesty's Government are unable to see the force of this argument.

Whatever may have been the reason, the fact remains, that up to the time of the arrival of the British High Commissioners at Washington, the term "Alabama claims" had a recognized and well-known meaning as direct claims, and that no other claims had been presented to the British Government. Nor, indeed, were these other claims even then presented.

The American High Commissioners, as appears by the 36th Protocol, stated that the history of the "Alabama," and other cruizers, showed extensive direct losses, and indirect injury, and that Great Britain had become justly liable *for the acts* of those cruizers and their tenders; that *the claims* for the loss and destruction of private property, which had thus far been presented, amounted to about 14,000,000 dollars, and "that in the hope of an amicable settlement, no estimate was made of the indirect losses, without prejudice, however, to the right to indemnification on their account, in the event of no such settlement being made."

The "indirect losses" were thus mentioned, not as *claims*, but as grievances, and were mentioned only to be withdrawn from discussion.

Mr. Fish says that it is unfortunate that the British High Commissioners did not remonstrate against the presentation of these claims, and "from the first to the last, took no exception, and recorded no objection, to the presentation made by the American Com-

* The italics are Dr Blüntschli's.

† "Revue de Droit International et de Législation comparée," 1870, pp. 473-4.

missioners of the claims *generically* known as the 'Alabama claims,' which stand on the Protocol as a 'genus,' or class of claims comprehending several species, and among them enumerating specifically the claims for indirect losses and injuries."

The answer to this is, that no mention is made in the Protocol of "claims generically known as the 'Alabama claims,'" or of any specific enumeration of them, or of any such presentation at all. All that occurred was the above-mentioned statement that the history of the "Alabama" and other cruizers showed indirect injuries, followed by the waiver of the indemnification on their account, in the hope of an amicable settlement.

The British High Commissioners thereupon took the natural course of not "entering upon a lengthened controversy" upon the barren question of injuries for which they believed no claim was presented, and these indirect losses and injuries were never, as you are aware, again brought forward by the American High Commissioners, nor did they re-appear until they were revived in the Case presented by the United States' Agent at Geneva, on the 15th of December.

Mr. Fish could not have been ignorant, from the report to which I have already referred, which he had received from Mr. Johnson, and from the discussions in the public press, of the feeling in England with regard to the exaggerated pretensions in Mr. Sumner's speech; and when he intended to introduce as "Alabama claims," similar claims of equally onerous character, it is much to be regretted that he and his colleagues did not explain more clearly that by "an amicable settlement" they meant one particular form of settlement, and that if the British High Commissioners did not acquiesce in it, they would bring forward the constructive claims, for which an enormous indemnity might be held due.

Instead of this, the American High Commissioners made a statement which was accepted by the British High Commissioners and read by Her Majesty's Government, and as far as they are aware, by the press and public of both countries, in a sense which, it is now stated, the American High Commissioners never intended it to bear, but which, until the interpretation appeared in the American Case, seemed the only sense in which it could be read.

Her Majesty's Government cannot accept the view which Mr. Fish appears to entertain that a negotiation must necessarily be a matter of bargain, in which a concession on one side is to be set off in each instance against a concession on the other. The waiver of the constructive claims was, as I stated to General Schenck, a requisite preliminary to the negotiation, because Her Majesty's Government could not (as the Government of the United States must have been aware then, and must have since become convinced) have assented to any mode of settlement which comprised these constructive claims, upon which the opinion of this country had already been pronounced so strongly when they were raised by Mr. Sumner.

Mr. Fish asks, "How could it happen that so important a feature of the negotiation as this alleged waiver is now represented to be, was left to inference, or to argument from intentions never expressed to the Commissioners or to the Government of the United States, until after the Treaty was signed?

"The amplitude and the comprehensive force of the Ist Article (or the granting clause) of the Treaty did not escape the critical attention of Her Majesty's Commissioners; but was any effort made to limit or reduce the scope of the submission, or to exclude the indirect claims?"

The answer to this is that, in the first place, the British High Commissioners believed that after the waiver they were agreed with the United States' High Commissioners upon the basis of the terms of the submission; and, in the second place, that they did limit the scope of the submission.

The British High Commissioners, in the information which they have furnished to Her Majesty's Government, both during the negotiation and since the presentation of the American Case, have uniformly maintained that the claims for indirect losses were not included, nor intended by them to be included, in the terms of the submission to arbitration, and you are aware that the British High Commissioners objected to the adoption of a form of reference to the Arbitrators, which might from its vagueness be taken to permit the introduction of such claims, and that it was not until after lengthened discussion in the Commission that the terms of reference as they now stand in the Treaty were settled.

Her Majesty's Government cannot acknowledge that the nature of the claims submitted was left to inference. On the contrary, the precise claims referred to arbitration were closely defined and limited.

Mr. Fish writes as though the reference to arbitration comprised "differences" and "complaints," and "all claims;" but the British High Commissioners especially guarded

against this. The claims submitted must be both "claims growing out of the acts committed by the aforesaid vessels," *i.e.*, "Alabama" and other cruizers, *and* claims "generically known as the 'Alabama claims.'"

The use of the words "acts committed" admittedly excludes the questions of blockade-running and concession of belligerent rights from the arbitration, and the specification of the claims as "claims generically known as the 'Alabama claims'" limits them to the class of direct claims; which it has, I trust, been abundantly shown were alone known at the time as "Alabama claims."

Mr. Fish attaches some importance in support of his views to the words "growing out of" and "generically," but the first phrase is taken from Mr. Adams' letter of the 31st of October, 1863, when, in forwarding "a number of memorials and other papers connected with the depredations of the vessel formerly called the 'Oreto,' and now the 'Florida,'" he observed that "the conclusion to which it would seem that both Governments arrive in regard to the disposition to be made of the claims growing out of the depredations of the 'Alabama' and other vessels issuing from British ports appears to render further discussion of the merits of the question unnecessary." No mention whatever of indirect or constructive claims had been made at this time, and the claims to which Mr. Adams referred are manifestly the claims for actual damages.

When the same expression is used again it must be taken to have the same meaning.

I will not follow Mr. Fish into the etymology of the word "generically." "Generically known as the 'Alabama claims'" seems to be the same as the "class of claims known as the 'Alabama claims,'" the phrase used in the Stanley-Johnson Convention, and serves to distinguish this class of claims from every other class of claims which the United States' Government might have to prefer. The "Alabama claims" have been designated as a "class of claims" to avoid the misapprehension, which at one time seemed to have occurred to Mr. Seward, that the words "Alabama claims" might be construed as meaning only claims on account of injuries sustained from the one vessel "Alabama." The phrase itself goes very far to define its own limited meaning; for, while it is quite intelligible that, for brevity's sake, the name of one vessel should stand for others of a particular class, of which it is the principal example, it appears to be contrary to all reason that the name of such a particular ship should be used to describe claims for general national losses, such as those for the decline of the commercial marine of the United States and the prolongation of the war.

Mr. Fish, with reference to the remark in his despatch of the 27th of February, that the indirect claims are covered by one of the alternatives of the Treaty, states that the Government of the United States are "of opinion that they are covered by the alternative power given to the Tribunal of Arbitration of awarding a sum in gross, in case it finds that Great Britain has failed to fulfil any duty, or of remitting to a Board of Assessors the determination of the validity of claims presented to them, and the amounts to be paid."

The VIth Article of the Treaty, after stating the three Rules, proceeds:—"Her Britannic Majesty has commanded her High Commissioners and Plenipotentiaries to declare that Her Majesty's Government cannot assent to the foregoing Rules as a statement of principles of international law which were in force *at the time when the claims mentioned in Article I* arose; but that Her Majesty's Government . . . . agrees that, in deciding the questions between the two countries arising out of *those claims*, the Arbitrators should assume," &c.

Article VII provides that "the said Tribunal *shall first determine as to each vessel separately* whether Great Britain has, by any act or omission, failed to fulfil any of the duties set forth in the three foregoing Rules, or recognized by the principles of international law not inconsistent with such Rules, *and shall certify such fact as to each of the said vessels.* In case the Tribunal find that Great Britain has *failed to fulfil any duty or duties as aforesaid,* it may, if it think proper, proceed to award a sum in gross to be paid by Great Britain *for all the claims referred to it.*"

All the claims must mean all the "claims mentioned in Article I."

Mr. Fish admits that the indirect losses are not covered by what he terms the other "alternative" of the Treaty, viz., the provision in Article X, that "in case the Tribunal finds that Great Britain has failed to fulfil any duty or duties as aforesaid, and does not award a sum in gross, the High Contracting Parties agree that a Board of Assessors shall be appointed to ascertain and determine what claims are valid, and what amount or amounts shall be paid by Great Britain to the United States on account of the liability arising from such failure, as to each vessel, according to the extent of such liability as decided by the Arbitrators."

Mr. W. Beach Lawrence, the distinguished American publicist, in a letter dated

the 20th ultimo, and published in the "Springfield Independent," observes:—"As in each case determined against Great Britain, the Board of Assessors are, by Article X, to ascertain and determine the amount which shall be paid by Great Britain to the United States on account of the liability arising from such failure as to each vessel, according to the extent of such liability as decided by the Arbitrators, there would seem to be no room for indirect damages. Besides the difficulty of deciding on a claim indeterminable in its nature, there would be the further embarrassment of apportioning the amount of injury growing out of the acts of each vessel in the general account. Is it possible that the Assessors are to decide what part of the prolongation of the war is to be assigned to each vessel? I am aware that there is a provision that the Arbitrators may, after they have decided as to each vessel separately, award a sum in gross for all the claims referred to them. I cannot, however, perceive how that provision in any wise extends the scope of the power of the Tribunal." Her Majesty's Government cannot perceive it either.

By both Articles VII and X, the Arbitrators are to determine the extent of the liability of Great Britain as to each vessel, *i.e.*, as to each cruizer separately. Throughout, the claims are strictly connected with the acts of the cruizers. Mr. Fish acknowledges that, if the claims are considered in detail, the indirect losses cannot be taken into account; and yet, as he states, they have been "presented at Geneva, not as claims for which a specific demand was made, but as losses and injuries consequent upon the acts complained of, and necessarily to be taken into equitable consideration on a final settlement and adjudication of all the differences submitted to the Tribunal."

I have already pointed out that "claims" and not "differences" have been submitted; and Mr. Fish's contention would amount to this, that, in awarding damages for a specific want of due diligence in regard to a particular vessel, the Arbitrators should take into consideration a variety of grievances not necessarily connected with that vessel, and which could not be made matters for a claim if examined in detail, and award a gross sum not proportioned to the want of diligence or to the injury thereby occasioned, but swelled by the amount of all the injuries and losses of which the United States may have complained in all the correspondence of which the history of the cruizers forms part.

That is to say, that the Arbitrators should give judgment in one matter and inflict a penalty for another matter. A principle so contrary to the ordinary practice of jurisprudence could not have been presumed by the British High Commissioners, or by Her Majesty's Government, to have been intended to be introduced, unless the intention was explained to them; but, from first to last, no mention of indirect losses was made in connection with the payment of a gross sum.

If the American High Commissioners desired that the alternative of the award of a gross sum should cover the claims for indirect losses, why were they not more explicit? and why did they not require some provision to be made in the Treaty to explain this for the guidance of the Arbitrators?

Mr. Fish says that "the claims for indirect losses were presented to the British Commissioners as solemnly and *with more definiteness of specification* than were presented by them to the American Commissioners the claims for alleged injuries which the people of Canada were said to have suffered from what was known as the Fenian raids."

But the indirect losses were never "presented" as "claims," and are even now said not to be "presented as claims" for which a specific demand is made; while the Fenian raid "claims" were proposed for consideration on the 4th of March; again "brought before" the High Commission on the 26th of April, when the British negotiators said that "they were instructed to present these claims," and it was not until the 3rd of May that they said that "they would not urge further that the settlement of these claims should be included in the present Treaty, and that they had the less difficulty in doing so, as a portion of the claims were of a constructive and inferential character."

Thus while the American indirect losses were only mentioned once, and then as it were incidentally, the Fenian raid claims were repeatedly and formally presented, and when their withdrawal from the negotiation was agreed to at its close, it was with a remark which could have had no just bearing, had not it been believed that all constructive and consequential claims had been withdrawn and excluded on the American side also.

Mr. Fish expresses doubts as to the point raised in my letter of the 20th of March, that the Washington Claims Commissioners have, and the Arbitrators have not, power to decide upon the extent of their own jurisdiction, and that no words similar to those conferring that power are to be found in the Articles relating to the Geneva Arbitration.

It will be seen, on comparing the Treaty of Washington with the Claims Convention between Great Britain and the United States of the 8th of February, 1853, that the words which I had quoted from the XIVth Article of the former are identical with the words

used in the IIIrd Article of the latter, under which the Claims Commissioners were empowered to give, and did undoubtedly give, decisions as to the extent of their jurisdiction; as, for instance, in the claims for Texas bonds of James Holford's executors, and Philip Dawson, and for Florida bonds of Heneage W. Dering, and in other cases.—(See Senate Executive Documents, No. 103, 34th Congress, 1st Session, pp. 63, 64.)

The Articles engaging to consider the results of the proceedings of the Tribunal, and of the Claims Commission respectively, as final settlements, Articles XI and XVII, are also adopted from the Convention of 1853, Article V; and had it been desired to give the same powers of jurisdiction to the Arbitrators as to the Commissioners, a clause similar to that in the XIVth Article would have been inserted to express it.

In the absence of such a clause the jurisdiction of the Arbitrators remains restricted to the particular claims "known as 'Alabama claims,'" submitted to them in Article I.

Her Majesty's Government cannot admit that a power, which, when it is designed to be given to the Claims Commissioners in one part of the Treaty is given in express words, can be inferentially assumed to be given in another part of the Treaty to the Arbitrators, by assigning a broad signification to the term "question" in the IInd Article.

The questions which the Arbitrators are to examine and decide, are obviously all questions that may be laid before them by the respective Governments, in preferring and refuting the particular claims on which their judgment is requested, and the Article must be read in connection with the succeeding Articles III, IV, and V, providing how the Cases, Counter-Cases, evidence, and arguments are to be brought before them.

Mr. Fish cannot mean that the Arbitrators may decide "any questions" not coming within the terms of the reference to the Tribunal. If that were to be the case, Her Majesty's Government might bring forward as a set-off against the Alabama claims the questions of the injury done to British trade by the blockade, or the Fenian raids, or possibly other questions. In short, a scope would be given to the Arbitration which the United States' Government could not have contemplated, and would probably be unwilling to admit.

Mr. Fish states that "the United States calmly submitted to the Commission the decision of its jurisdiction" over the Cotton Loan claims; but this statement does not appear to be at all borne out by the "Argument for the United States on motion to dismiss" these claims.

The United States' agent moved for the dismissal of the claim, as not being included under the Treaty, and plainly notified that the United States refused to permit it to be considered as included; his argument being that there was a constitutional provision which prevented the payment of such claims, that this was known to the American Commissioners when negotiating the Treaty, to the American Government when accepting it, and to the Senate when ratifying it, and that it was impossible for the United States to pay or to consider the question of paying the claims.

"It must be borne in mind," he said, "that at the time of this correspondence, as well as at the time of the conclusion and ratification of the Treaty, the Constitution of the United States contained an express prohibition of the assumption or payment of these debts by the United States or by any State. That every officer of the United States, executive, legislative, and judicial, was thus bound by the supreme law of the land and by his oath of office to treat as utterly null any provision of any Treaty or statute in contravention of that constitutional prohibition, under penalty of impeachment or its equivalent."

The agent concluded by asking "the dismission of the claim on the ground specified in his motion."

In short, he positively declared that no award unfavourable to the United States would, or could, have been accepted and paid.

There are several other statements made by Mr. Fish which are open to reply, but I have considered it sufficient, for the purposes of this despatch, to confine my comments to those which bear more immediately on the negotiation and interpretation of the Treaty.

I am, &c.

(Signed) GRANVILLE.

CORRESPONDENCE respecting Claims for Indirect Losses put forward in the Case presented by the United States' Government to the Tribunal of Arbitration at Geneva.

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